

Competition Act (R.S., 1985, c. C-34)

Act current to January 25th, 2011

Attention: See coming into force provision and notes, where applicable.

Competition Act

C-34

An Act to provide for the general regulation of trade and commerce in respect of conspiracies, trade practices and mergers affecting competition

SHORT TITLE

Short title

1. This Act may be cited as the *Competition Act*.

R.S., 1985, c. C-34, s. 1; R.S., 1985, c. 19 (2nd Supp.), s. 19.

PART I

PURPOSE AND INTERPRETATION

PURPOSE

Purpose of Act

1.1 The purpose of this Act is to maintain and encourage competition in Canada in order to promote the efficiency and adaptability of the Canadian economy, in order to expand opportunities for Canadian participation in world markets while at the same time recognizing the role of foreign competition in Canada, in order to ensure that small and medium-sized enterprises have an equitable opportunity to participate in the Canadian economy and in order to provide consumers with competitive prices and product choices.

R.S., 1985, c. 19 (2nd Supp.), s. 19.

INTERPRETATION

Definitions

2. (1) In this Act,

"article"

« **article** »

"article" means real and personal property of every description including

(a) money,

(b) deeds and instruments relating to or evidencing the title or right to property or an interest, immediate, contingent or otherwise, in a corporation or in any assets of a corporation,

(c) deeds and instruments giving a right to recover or receive property,
(d) tickets or like evidence of right to be in attendance at a particular place at a particular time or times or of a right to transportation, and
(e) energy, however generated;

"business"

« **entreprise** »

"business" includes the business of

(a) manufacturing, producing, transporting, acquiring, supplying, storing and otherwise dealing in articles, and

(b) acquiring, supplying and otherwise dealing in services.

It also includes the raising of funds for charitable or other non-profit purposes.

"Commission" [Repealed, R.S., 1985, c. 19 (2nd Supp.), s. 20]

"Commissioner"

« **commissaire** »

"Commissioner" means the Commissioner of Competition appointed under subsection 7(1);

"Director" [Repealed, 1999, c. 2, s. 1]

"merger" [Repealed, R.S., 1985, c. 19 (2nd Supp.), s. 20]

"Minister"

« **ministre** »

"Minister" means the Minister of Industry;

"monopoly" [Repealed, R.S., 1985, c. 19 (2nd Supp.), s. 20]

"product"

« **produit** »

"product" includes an article and a service;

"record"

« **document** »

"record" includes any correspondence, memorandum, book, plan, map, drawing, diagram, pictorial or graphic work, photograph, film, microform, sound recording, videotape, machine readable record, and any other documentary material, regardless of physical form or characteristics, and any copy or portion thereof;

"service"

« **service** »

"service" means a service of any description whether industrial, trade, professional or otherwise;

“supply”

« **fournir** » ou « **approvisionner** »

“supply” means,

(a) in relation to an article, sell, rent, lease or otherwise dispose of an article or an interest therein or a right thereto, or offer so to dispose of an article or interest therein or a right thereto, and

(b) in relation to a service, sell, rent or otherwise provide a service or offer so to provide a service;

“trade, industry or profession”

« **commerce, industrie ou profession** »

“trade, industry or profession” includes any class, division or branch of a trade, industry or profession;

“Tribunal”

« **Tribunal** »

“Tribunal” means the Competition Tribunal established by subsection 3(1) of the *Competition Tribunal Act*.

Affiliated corporation, partnership or sole proprietorship

(2) For the purposes of this Act,

(a) one corporation is affiliated with another corporation if one of them is the subsidiary of the other or both are subsidiaries of the same corporation or each of them is controlled by the same person;

(b) if two corporations are affiliated with the same corporation at the same time, they are deemed to be affiliated with each other; and

(c) a partnership or sole proprietorship is affiliated with another partnership, sole proprietorship or a company if both are controlled by the same person.

Subsidiary corporation

(3) For the purposes of this Act, a corporation is a subsidiary of another corporation if it is controlled by that other corporation.

Control

(4) For the purposes of this Act,

(a) a corporation is controlled by a person other than Her Majesty if

(i) securities of the corporation to which are attached more than fifty per cent of the votes that may be cast to elect directors of the corporation are held, directly or indirectly, whether through one or more subsidiaries or otherwise, otherwise than by way of security only, by or for the benefit of that person, and

(ii) the votes attached to those securities are sufficient, if exercised, to elect a majority of the directors of the corporation;

(b) a corporation is controlled by Her Majesty in right of Canada or a province if

(i) the corporation is controlled by Her Majesty in the manner described in paragraph (a), or

(ii) in the case of a corporation without share capital, a majority of the directors of the corporation, other than *ex officio* directors, are appointed by

(A) the Governor in Council or the Lieutenant Governor in Council of the province, as the case may be, or

(B) a Minister of the government of Canada or the province, as the case may be; and

(c) a partnership is controlled by a person if the person holds an interest in the partnership that entitles the person to receive more than fifty per cent of the profits of the partnership or more than fifty per cent of its assets on dissolution.

R.S., 1985, c. C-34, s. 2; R.S., 1985, c. 19 (2nd Supp.), s. 20; 1992, c. 1, s. 145(F); 1995, c. 1, s. 62; 1999, c. 2, s. 1, c. 31, s. 44(F).

Binding on agents of Her Majesty in certain cases

2.1 This Act is binding on and applies to an agent of Her Majesty in right of Canada or a province that is a corporation, in respect of commercial activities engaged in by the corporation in competition, whether actual or potential, with other persons to the extent that it would apply if the agent were not an agent of Her Majesty.

R.S., 1985, c. 19 (2nd Supp.), s. 21.

Defects of form

3. No proceedings under this Act shall be deemed invalid by reason of any defect of form or any technical irregularity.

R.S., c. C-23, s. 3.

Collective bargaining activities

4. (1) Nothing in this Act applies in respect of

(a) combinations or activities of workmen or employees for their own reasonable protection as such workmen or employees;

(b) contracts, agreements or arrangements between or among fishermen or associations of fishermen and persons or associations of persons engaged in the buying or processing of fish relating to the prices, remuneration or other like conditions under which fish will be caught and supplied to those persons by fishermen; or

(c) contracts, agreements or arrangements between or among two or more employers in a trade, industry or profession, whether effected directly between or among the employers or through the instrumentality of a corporation or association of which the employers are members, pertaining to collective bargaining with their employees in respect of salary or wages and terms or conditions of employment.

Limitation

(2) Nothing in this section exempts from the application of any provision of this Act a contract, agreement or arrangement entered into by an employer to withhold any product from any person, or to refrain from acquiring from any person any product other than the services of workmen or employees.

R.S., c. C-23, s. 4; 1974-75-76, c. 76, s. 2.

4.1 [Repealed, 2009, c. 2, s. 407]

Underwriters

5. (1) Section 45 does not apply in respect of an agreement or arrangement between persons who are members of a class of persons who ordinarily engage in the business of dealing in securities or between such persons and the issuer of a specific security, in the case of a primary distribution, or the vendor of a specific security, in the case of a secondary distribution, if the agreement or arrangement has a reasonable relationship to the underwriting of a specific security.

Definition of "underwriting"

(2) For the purposes of this section, "underwriting" of a security means the primary or secondary distribution of the security, in respect of which distribution

- (a) a prospectus is required to be filed, accepted or otherwise approved pursuant to a law enacted in Canada or in a jurisdiction outside Canada for the supervision or regulation of trade in securities; or
- (b) a prospectus would be required to be filed, accepted or otherwise approved but for an express exemption contained in or given pursuant to a law mentioned in paragraph (a).

R.S., 1985, c. C-34, s. 5; 1999, c. 2, s. 2; 2009, c. 2, s. 408.

Amateur sport

6. (1) This Act does not apply in respect of agreements or arrangements between or among teams, clubs and leagues pertaining to participation in amateur sport.

Definition of "amateur sport"

(2) For the purposes of this section, "amateur sport" means sport in which the participants receive no remuneration for their services as participants.

1974-75-76, c. 76, s. 2.

PART II

ADMINISTRATION

Commissioner of Competition

7. (1) The Governor in Council may appoint an officer to be known as the Commissioner of Competition, who shall be responsible for

- (a) the administration and enforcement of this Act;
- (b) the administration of the *Consumer Packaging and Labelling Act*;
- (c) the enforcement of the *Consumer Packaging and Labelling Act* except as it relates to food, as that term is defined in section 2 of the *Food and Drugs Act*; and
- (d) the administration and enforcement of the *Precious Metals Marking Act* and the *Textile Labelling Act*.

Oath of office

(2) The Commissioner shall, before taking up the duties of the Commissioner, take and subscribe, before the Clerk of the Privy Council, an oath or solemn affirmation, which shall be filed in the office of the Clerk, in the following form:

I do solemnly swear (or affirm) that I will faithfully, truly and impartially, and to the best of my judgment, skill and ability, execute the powers and trusts reposed in me as Commissioner of Competition. (*In the case where an oath is taken add "So help me God".*)

Salary

(3) The Commissioner shall be paid such salary as may be from time to time fixed and allowed by the Governor in Council.

R.S., 1985, c. C-34, s. 7; 1999, c. 2, ss. 4, 37.

Deputy Commissioners

8. (1) One or more persons may be appointed Deputy Commissioners of Competition in the manner authorized by law.

Powers of Deputy

(2) The Governor in Council may authorize a Deputy Commissioner to exercise the powers and perform the duties of the Commissioner whenever the Commissioner is absent or unable to act or whenever there is a vacancy in the office of Commissioner.

Powers of other persons

(3) The Governor in Council may authorize any person to exercise the powers and perform the duties of the Commissioner whenever the Commissioner and the Deputy Commissioners are absent or unable to act or, if one or more of those offices are vacant, whenever the holders of the other of those offices are absent or unable to act.

Inquiry by Deputy

(4) The Commissioner may authorize a Deputy Commissioner to make inquiry regarding any matter into which the Commissioner has power to inquire, and when so authorized a Deputy Commissioner shall perform the duties and may exercise the powers of the Commissioner in respect of that matter.

Powers of Commissioner unaffected

(5) The exercise, pursuant to this Act, of any of the powers or the performance of any of the duties of the Commissioner by a Deputy Commissioner or other person does not in any way limit, restrict or qualify the powers or duties of the Commissioner, either generally or with respect to any particular matter.

R.S., 1985, c. C-34, s. 8; 1999, c. 2, s. 5.

Application for inquiry

9. (1) Any six persons resident in Canada who are not less than eighteen years of age and who are of the opinion that

(a) a person has contravened an order made pursuant to section 32, 33 or 34, or Part VII.1 or VIII,

(b) grounds exist for the making of an order under Part VII.1 or VIII, or

(c) an offence under Part VI or VII has been or is about to be committed, may apply to the Commissioner for an inquiry into the matter.

Material to be submitted

(2) An application made under subsection (1) shall be accompanied by a statement in the form of a solemn or statutory declaration showing

- (a) the names and addresses of the applicants, and at their election the name and address of any one of their number, or of any attorney, solicitor or counsel, whom they may, for the purpose of receiving any communication to be made pursuant to this Act, have authorized to represent them;

(b) the nature of

(i) the alleged contravention,

(ii) the grounds alleged to exist for the making of an order, or

(iii) the alleged offence

and the names of the persons believed to be concerned therein and privy thereto; and

(c) a concise statement of the evidence supporting their opinion.

R.S., 1985, c. C-34, s. 9; R.S., 1985, c. 19 (2nd Supp.), s. 22; 1999, c. 2, ss. 6, 37.

Inquiry by Commissioner

10. (1) The Commissioner shall

(a) on application made under section 9,

(b) whenever the Commissioner has reason to believe that

(i) a person has contravened an order made pursuant to section 32, 33 or 34, or Part VII.1 or Part VIII,

(ii) grounds exist for the making of an order under Part VII.1 or Part VIII, or

(iii) an offence under Part VI or VII has been or is about to be committed, or

(c) whenever directed by the Minister to inquire whether any of the circumstances described in subparagraphs (b)(i) to (iii) exists,

cause an inquiry to be made into all such matters as the Commissioner considers necessary to inquire into with the view of determining the facts.

Information on inquiry

(2) The Commissioner shall, on the written request of any person whose conduct is being inquired into under this Act or any person who applies for an inquiry under section 9, inform that person or cause that person to be informed as to the progress of the inquiry.

Inquiries to be in private

(3) All inquiries under this section shall be conducted in private.

R.S., 1985, c. C-34, s. 10; R.S., 1985, c. 19 (2nd Supp.), s. 23; 1999, c. 2, ss. 7, 37, c. 31, s. 45.

Order for oral examination, production or written return

11. (1) If, on the *ex parte* application of the Commissioner or his or her authorized representative, a judge of a superior or county court is satisfied by information on oath or solemn affirmation that an inquiry is being made under section 10 and that a person has or is likely to have information that is relevant to the inquiry, the judge may order the person to

- (a) attend as specified in the order and be examined on oath or solemn affirmation by the Commissioner or the authorized representative of the Commissioner on any matter that is relevant to the inquiry before a person, in this section and sections 12 to 14 referred to as a "presiding officer", designated in the order;
- (b) produce to the Commissioner or the authorized representative of the Commissioner within a time and at a place specified in the order, a record, a copy of a record certified by affidavit to be a true copy, or any other thing, specified in the order; or
- (c) make and deliver to the Commissioner or the authorized representative of the Commissioner, within a time specified in the order, a written return under oath or solemn affirmation showing in detail such information as is by the order required.

Records in possession of affiliate

(2) Where the person against whom an order is sought under paragraph (1)(b) in relation to an inquiry is a corporation and the judge to whom the application is made under subsection (1) is satisfied by information on oath or solemn affirmation that an affiliate of the corporation, whether the affiliate is located in Canada or outside Canada, has records that are relevant to the inquiry, the judge may order the corporation to produce the records.

No person excused from complying with order

(3) No person shall be excused from complying with an order under subsection (1) or (2) on the ground that the testimony, record or other thing or return required of the person may tend to criminate the person or subject him to any proceeding or penalty, but no testimony given by an individual pursuant to an order made under paragraph (1)(a), or return made by an individual pursuant to an order made under paragraph (1)(c), shall be used or received against that individual in any criminal proceedings thereafter instituted against him, other than a prosecution under section 132 or 136 of the *Criminal Code*.

Effect of order

(4) An order made under this section has effect anywhere in Canada.

R.S., 1985, c. C-34, s. 11; R.S., 1985, c. 19 (2nd Supp.), s. 24; 1999, c. 2, s. 37; 2002, c. 8, s. 126, c. 16, s. 1.

Witness competent and compellable

12. (1) Any person summoned to attend pursuant to paragraph 11(1)(a) is competent and may be compelled to give evidence.

Fees

(2) Every person summoned to attend pursuant to paragraph 11(1)(a) is entitled to the like fees and allowances for so doing as if summoned to attend before a superior court of the province in which the person is summoned to attend.

Representation by counsel

(3) A presiding officer shall permit a person who is being examined pursuant to an order under paragraph 11(1)(a) and any person whose conduct is being inquired into to be represented by counsel.

Attendance of person whose conduct is being inquired into

(4) Any person whose conduct is being inquired into at an examination pursuant to an order under paragraph 11(1)(a) and that person's counsel are entitled to attend the examination unless the Commissioner or the authorized representative of the Commissioner, or the person being examined or his employer, establishes to the satisfaction of the presiding officer that the presence of the person whose conduct is being inquired into would

(a) be prejudicial to the effective conduct of the examination or the inquiry; or
(b) result in the disclosure of confidential commercial information that relates to the business of the person being examined or his employer.

R.S., 1985, c. C-34, s. 12; R.S., 1985, c. 19 (2nd Supp.), s. 24; 1999, c. 2, s. 37.

Presiding officer

13. (1) Any person may be designated as a presiding officer who is a barrister or advocate of at least ten years standing at the bar of a province or who has been a barrister or advocate at the bar of a province for at least ten years.

Remuneration and expenses

(2) A presiding officer shall be paid such remuneration, and is entitled to be paid such travel and living expenses, and such other expenses, incurred in the performance of his duties under this Act, as may be fixed by the Governor in Council.

R.S., 1985, c. C-34, s. 13; R.S., 1985, c. 19 (2nd Supp.), s. 24.

Administration of oaths

14. (1) The presiding officer may administer oaths and take and receive solemn affirmations for the purposes of examinations pursuant to paragraph 11(1)(a).

Orders of presiding officer

(2) A presiding officer may make such orders as he considers to be proper for the conduct of an examination pursuant to paragraph 11(1)(a).

Application to court

(3) A judge of a superior or county court may, on application by a presiding officer, order any person to comply with an order made by the presiding officer under subsection (2).

Notice

(4) No order may be made under subsection (3) unless the presiding officer has given to the person in respect of whom the order is sought and the Commissioner twenty-four hours notice of the hearing of the application for the order or such shorter notice as the judge to whom the application is made considers reasonable.

Warrant for entry of premises

15. (1) If, on the *ex parte* application of the Commissioner or his or her authorized representative, a judge of a superior or county court is satisfied by information on oath or solemn affirmation

(a) that there are reasonable grounds to believe that

(i) a person has contravened an order made pursuant to section 32, 33 or 34, or Part VII.1 or VIII,

(ii) grounds exist for the making of an order under Part VII.1 or VIII, or

(iii) an offence under Part VI or VII has been or is about to be committed, and (b) that there are reasonable grounds to believe that there is, on any premises, any record or other thing that will afford evidence with respect to the circumstances referred to in subparagraph (a)(i), (ii) or (iii), as the case may be,

the judge may issue a warrant under his hand authorizing the Commissioner or any other person named in the warrant to

(c) enter the premises, subject to such conditions as may be specified in the warrant, and

(d) search the premises for any such record or other thing and copy it or seize it for examination or copying.

Contents of warrant

(2) A warrant issued under this section shall identify the matter in respect of which it is issued, the premises to be searched and the record or other thing, or the class of records or other things, to be searched for.

Execution of search warrant

(3) A warrant issued under this section shall be executed between six o'clock in the forenoon and nine o'clock in the afternoon, unless the judge issuing it, by the warrant, authorizes execution of it at another time.

Idem

(4) A warrant issued under this section may be executed anywhere in Canada.

Duty of persons in control of premises

(5) Every person who is in possession or control of any premises or record or other thing in respect of which a warrant is issued under subsection (1) shall, on presentation of the warrant, permit the Commissioner or other person named in the warrant to enter the premises, search the premises and examine the record or other thing and to copy it or seize it.

Where admission or access refused

(6) Where the Commissioner or any other person, in executing a warrant issued under subsection (1), is refused access to any premises, record or other thing or where the Commissioner believes on reasonable grounds that access will be refused,

the judge who issued the warrant or a judge of the same court, on the *ex parte* application of the Commissioner, may by order direct a peace officer to take such steps as the judge considers necessary to give the Commissioner or other person access.

Where warrant not necessary

(7) The Commissioner or the authorized representative of the Commissioner may exercise any of the powers set out in paragraph (1)(c) or (d) without a warrant if the conditions set out in paragraphs (1)(a) and (b) exist but by reason of exigent circumstances it would not be practical to obtain the warrant.

Exigent circumstances

(8) For the purposes of subsection (7), exigent circumstances include circumstances in which the delay necessary to obtain a warrant under subsection (1) would result in the loss or destruction of evidence.

R.S., 1985, c. C-34, s. 15; R.S., 1985, c. 19 (2nd Supp.), s. 24; 1999, c. 2, ss. 8, 37; 2002, c. 8, s. 128.

Operation of computer system

16. (1) A person who is authorized pursuant to subsection 15(1) to search premises for a record may use or cause to be used any computer system on the premises to search any data contained in or available to the computer system, may reproduce the record or cause it to be reproduced from the data in the form of a printout or other intelligible output and may seize the printout or other output for examination or copying.

Duty of person in control of computer system

(2) Every person who is in possession or control of any premises in respect of which a warrant is issued under subsection 15(1) shall, on presentation of the warrant, permit any person named in the warrant to use or cause to be used any computer system or part thereof on the premises to search any data contained in or available to the computer system for data from which a record that that person is authorized to search for may be produced, to obtain a physical copy thereof and to seize it.

Order restricting operation of computer system

(3) A judge who issued a warrant under subsection 15(1) or a judge of the same court may, on application by the Commissioner or any person who is in possession or control of a computer system or a part thereof on any premises in respect of which the warrant was issued, make an order

(a) specifying the individuals who may operate the computer system and fixing the times when they may do so; and

(b) setting out any other terms and conditions on which the computer system may be operated.

Notice by person in possession or control

(4) No order may be made under subsection (3) on application by a person who is in possession or control of a computer system or part thereof unless that person has given the Commissioner twenty-four hours notice of the hearing of the application or such shorter notice as the judge considers reasonable.

Notice by Commissioner

(5) No order may be made under subsection (3) on application by the Commissioner after a search has begun of the premises in respect of which the order is sought unless the Commissioner has given the person who is in possession or control of the premises twenty-four hours notice of the hearing of the application or such shorter notice as the judge considers reasonable.

Definitions

(6) In this section, "computer system" and "data" have the meanings set out in subsection 342.1(2) of the *Criminal Code*.

R.S., 1985, c. C-34, s. 16; R.S., 1985, c. 19 (2nd Supp.), s. 24; 1999, c. 2, s. 37.

Presentation of or report on record or thing seized

17. (1) Where a record or other thing is seized pursuant to paragraph 15(1)(d), subsection 15(7) or section 16, the Commissioner or the authorized representative of the Commissioner shall, as soon as practicable,

(a) take the record or other thing before the judge who issued the warrant or a judge of the same court or, if no warrant was issued, before a judge of a superior or county court; or

(b) make a report in respect of the record or other thing to a judge determined in accordance with paragraph (a).

Report

(2) A report to a judge under paragraph (1)(b) in respect of a record or other thing shall include

(a) a statement as to whether the record or other thing was seized pursuant to paragraph 15(1)(d), subsection 15(7) or section 16;

(b) a description of the premises searched;

(c) a description of the record or other thing seized; and

(d) the location in which it is detained.

Retention or return of thing seized

(3) Where a record or other thing is seized pursuant to section 15 or 16, the judge before whom it is taken or to whom a report is made in respect of it pursuant to this section may, if he is satisfied that the record or other thing is required for an inquiry or any proceeding under this Act, authorize the Commissioner to retain it.

R.S., 1985, c. C-34, s. 17; R.S., 1985, c. 19 (2nd Supp.), s. 24; 1999, c. 2, s. 37, c. 31, s. 46(F); 2002, c. 8, s. 129.

Commissioner to take reasonable care

18. (1) Where any record or other thing is produced pursuant to section 11 or seized pursuant to section 15 or 16, the Commissioner shall take reasonable care to

ensure that it is preserved until it is returned to the person by whom it was produced or from whom it was seized or until it is required to be produced in any proceeding under this Act.

Certified copies

(1.1) The Commissioner need not return any copy of a record produced pursuant to section 11.

Access to records or things

(2) The person by whom a record or other thing is produced pursuant to section 11 or from whom a record or other thing is seized pursuant to section 15 or 16 is entitled, at any reasonable time and subject to such reasonable conditions as may be imposed by the Commissioner, to inspect the record or other thing.

Copy of record where returned

(3) The Commissioner may, before returning any record produced pursuant to section 11 or seized pursuant to section 15 or 16, make or cause to be made, and may retain, a copy thereof.

Detention of things seized

(4) Any record or other thing that is produced pursuant to section 11, or the retention of which is authorized under subsection 17(3), shall be returned to the person by whom it was produced or the person from whom it was seized not later than sixty days after it was produced or its retention was authorized, unless, before the expiration of that period,

(a) the person by whom it was produced or from whom it was seized agrees to its further detention for a specified period of time;

(b) the judge who authorized its production or retention or a judge of the same court is satisfied on application that, having regard to the circumstances, its further detention for a specified period of time is warranted and the judge so orders; or

(c) proceedings are instituted in which the record or thing may be required.

R.S., 1985, c. C-34, s. 18; R.S., 1985, c. 19 (2nd Supp.), s. 24; 1999, c. 2, s. 37; 2002, c. 16, s. 2.

Claim to solicitor-client privilege (section 11)

19. (1) Where a person is ordered to produce a record pursuant to section 11 and that person claims that there exists a solicitor-client privilege in respect thereof, the person shall place it in a package and seal and identify the package and place it in the custody of a person referred to in subsection (3).

Claim to solicitor-client privilege (section 15 or 16)

(2) Where, pursuant to section 15 or 16, any person is about to examine, copy or seize or is in the course of examining, copying or seizing any record and a person appearing to be in authority claims that there exists a solicitor-client privilege in respect thereof, the first-mentioned person, unless the person claiming the privilege withdraws the claim or the first-mentioned person desists from examining and copying the record and from seizing it or a copy thereof, shall, without examining or

further examining it or making a copy or further copy thereof, place it and any copies of it made by him, and any notes taken in respect of it, in a package, and seal and identify the package and place it in the custody of a person referred to in subsection (3).

Custody of record

(3) A record in respect of which a solicitor-client privilege is claimed under subsection (1) or (2) shall be placed in the custody of

(a) the registrar, prothonotary or other like officer of a superior or county court in the province in which the record was ordered to be produced or in which it was found, or of the Federal Court;

(b) a sheriff of the district or county in which the record was ordered to be produced or in which it was found; or

(c) some person agreed on between the Commissioner or the authorized representative of the Commissioner and the person who makes the claim of privilege.

Determination of claim to privilege

(4) A judge of a superior or county court in the province in which a record placed in custody under this section was ordered to be produced or in which it was found, or of the Federal Court, sitting *in camera*, may decide the question of solicitor-client privilege in relation to the record on application made in accordance with the rules of the court by the Commissioner or the owner of the record or the person in whose possession it was found within thirty days after the day on which the record was placed in custody if notice of the application has been given by the applicant to all other persons entitled to make application.

Idem

(5) Where no application is made in accordance with subsection (4) within thirty days after the day on which a record is placed in custody under this section, any judge referred to in subsection (4) shall, on *ex parte* application by or on behalf of the Commissioner, order the record to be delivered to the Commissioner.

Authority of judge

(6) A judge referred to in subsection (4) may give any directions that the judge deems necessary to give effect to this section, may order delivery up to the judge out of custody of any record in respect of which he is asked to decide a question of solicitor-client privilege and may inspect any such record.

Prohibition

(7) Any person who is about to examine, copy or seize any record pursuant to section 15 or 16 shall not do so without affording a reasonable opportunity for a claim of solicitor-client privilege to be made under this section.

Access to record in custody

(8) At any time while a record is in custody under this section, a judge of a superior or county court in the province in which the record is in custody, or of the Federal Court, may, on an *ex parte* application of a person claiming solicitor-client privilege under this section, authorize that person to examine the record or make a copy of it in the presence of the person who has custody of it or the judge, but any such authorization shall contain provisions to ensure that the record is repackaged and that the package is resealed without alteration or damage.

R.S., 1985, c. C-34, s. 19; R.S., 1985, c. 19 (2nd Supp.), s. 24; 1999, c. 2, s. 37.

Inspection of records and things

20. (1) All records or other things obtained or received by the Commissioner may be inspected by the Commissioner and also by such persons as he directs.

Copies

(2) Copies of any records referred to in subsection (1), including copies by any process of photographic reproduction, on proof orally or by affidavit that they are true copies, are admissible in evidence in any proceedings under this Act and have the same probative force as the original.

Proof

(3) Where proof referred to in subsection (2) is offered by affidavit, it is not necessary to prove the signature or official character of the deponent, if that information is set out in the affidavit, or to prove the signature or official character of the person before whom the affidavit was sworn.

R.S., 1985, c. C-34, s. 20; R.S., 1985, c. 19 (2nd Supp.), s. 24; 1999, c. 2, s. 37.

Counsel

21. Whenever in the opinion of the Commissioner the public interest so requires, the Commissioner may apply to the Attorney General of Canada to appoint and instruct counsel to assist in an inquiry under section 10, and on such an application the Attorney General of Canada may appoint and instruct counsel accordingly.

R.S., 1985, c. C-34, s. 21; R.S., 1985, c. 19 (2nd Supp.), s. 24; 1999, c. 2, s. 37.

Discontinuance of inquiry

22. (1) At any stage of an inquiry under section 10, if the Commissioner is of the opinion that the matter being inquired into does not justify further inquiry, the Commissioner may discontinue the inquiry.

Report

(2) The Commissioner shall, on discontinuing an inquiry, make a report in writing to the Minister showing the information obtained and the reason for discontinuing the inquiry.

Notice to applicant

(3) Where an inquiry made on application under section 9 is discontinued, the Commissioner shall inform the applicants of the decision and give the grounds therefor.

Review of decision

(4) The Minister may, on the written request of applicants under section 9 or on the Minister's own motion, review any decision of the Commissioner to discontinue an inquiry under section 10, and may, if in the Minister's opinion the circumstances warrant, instruct the Commissioner to make further inquiry.

R.S., 1985, c. C-34, s. 22; R.S., 1985, c. 27 (1st Supp.), s. 187, c. 19 (2nd Supp.), s. 24; 1999, c. 2, s. 37, c. 31, s. 47(F).

Reference to Attorney General of Canada

23. (1) The Commissioner may, at any stage of an inquiry under section 10, in addition to or in lieu of continuing the inquiry, remit any records, returns or evidence to the Attorney General of Canada for consideration as to whether an offence has been or is about to be committed against this Act and for such action as the Attorney General of Canada may wish to take.

Prosecution by Attorney General of Canada

(2) The Attorney General of Canada may institute and conduct any prosecution or other criminal proceedings under this Act, and for those purposes may exercise all the powers and perform all the duties and functions conferred by the *Criminal Code* on the attorney general of a province.

R.S., 1985, c. C-34, s. 23; R.S., 1985, c. 19 (2nd Supp.), s. 24; 1999, c. 2, s. 37.

Regulations

24. (1) The Governor in Council may make regulations regulating the practice and procedure in respect of applications, proceedings and orders under sections 11 to 19.

Publication of proposed regulations

(2) Subject to subsection (3), a copy of each regulation that the Governor in Council proposes to make under subsection (1) shall be published in the *Canada Gazette* at least sixty days before the proposed effective date thereof and a reasonable opportunity shall be afforded to interested persons to make representations with respect thereto.

Exception

(3) No proposed regulation need be published under subsection (2) if it has previously been published pursuant to that subsection, whether or not it has been amended as a result of representations made pursuant to that subsection.

R.S., 1985, c. C-34, s. 24; R.S., 1985, c. 19 (2nd Supp.), s. 24.

Staff

25. All officers, clerks and employees required for carrying out this Act shall be appointed in accordance with the *Public Service Employment Act*, except that the

Commissioner may, with the approval of the Governor in Council, employ such temporary, technical and special assistants as may be required to meet the special conditions that may arise in carrying out this Act.

R.S., 1985, c. C-34, s. 25; R.S., 1985, c. 19 (2nd Supp.), s. 25; 1999, c. 2, s. 37.

Remuneration of temporary staff

26. (1) Any temporary, technical and special assistants employed by the Commissioner shall be paid such remuneration, and are entitled to be paid such travel and living expenses incurred in the performance of their duties under this Act, as may be fixed by the Governor in Council.

Remuneration and expenses payable out of appropriations

(2) The remuneration and expenses of the Commissioner and of the temporary, technical and special assistants employed by the Commissioner, and of any counsel instructed under this Act, shall be paid out of money appropriated by Parliament to defray the cost of administering this Act.

Public Service Employment Act applies

(3) Subject to this section and section 7, the *Public Service Employment Act* and other Acts relating to the public service, in so far as applicable, apply to the Commissioner and to all other persons employed under this Act.

R.S., 1985, c. C-34, s. 26; R.S., 1985, c. 19 (2nd Supp.), s. 25; 1999, c. 2, s. 37; 2003, c. 22, s. 225(E).

Authority of technical or special assistants

27. Any technical or special assistant or other person employed under this Act, when so authorized or deputed by the Commissioner, has power and authority to exercise any of the powers and perform any of the duties of the Commissioner under this Act with respect to any particular inquiry, as may be directed by the Commissioner.

R.S., 1985, c. C-34, s. 27; 1999, c. 2, s. 37.

Minister may require interim report

28. The Minister may at any time require the Commissioner to submit an interim report with respect to any inquiry by him under this Act, and it is the duty of the Commissioner whenever thereunto required by the Minister to render an interim report setting out the action taken, the evidence obtained and the Commissioner's opinion as to the effect of the evidence.

R.S., 1985, c. C-34, s. 28; 1999, c. 2, s. 37.

Confidentiality

29. (1) No person who performs or has performed duties or functions in the administration or enforcement of this Act shall communicate or allow to be communicated to any other person except to a Canadian law enforcement agency or for the purposes of the administration or enforcement of this Act

(a) the identity of any person from whom information was obtained pursuant to this Act;

(b) any information obtained pursuant to section 11, 15, 16 or 114;

- (c) whether notice has been given or information supplied in respect of a particular proposed transaction under section 114;
- (d) any information obtained from a person requesting a certificate under section 102; or
- (e) any information provided voluntarily pursuant to this Act.

Exception

(2) This section does not apply in respect of any information that has been made public or any information the communication of which was authorized by the person who provided the information.

R.S., 1985, c. C-34, s. 29; R.S., 1985, c. 19 (2nd Supp.), s. 26; 2002, c. 16, s. 2.1.

Communication to Minister of Transport

29.1 (1) Notwithstanding subsection 29(1), the Commissioner may, if requested to do so by the Minister of Transport in accordance with subsection (3), communicate or allow to be communicated to that Minister any information referred to in subsection (2) that is specifically requested by that Minister.

Information

- (2) The information that may be communicated under this section is
- (a) the identity of any person from whom information was obtained under this Act;
 - (b) any information obtained in the course of an inquiry under section 10;
 - (c) any information obtained under section 11, 15, 16 or 114;
 - (d) any information obtained from a person requesting a certificate under section 102;
 - (e) whether notice has been given or information supplied in respect of a particular proposed transaction under section 114; and
 - (f) any information collected, received or generated by or on behalf of the Commissioner, including compilations and analyses.

Contents of request

- (3) Requests under this section must be in writing and must
- (a) specify the information referred to in any of paragraphs (2)(a) to (f) that is required; and
 - (b) state that the Minister of Transport requires the information for the purposes of section 53.1 or 53.2 of the *Canada Transportation Act* and identify the transaction being considered under that section.

Restriction

(4) The information communicated under subsection (1) may be used only for the purposes of section 53.1 or 53.2, as the case may be, of the *Canada Transportation Act*.

Confidentiality

(5) No person who performs or has performed duties or functions in the administration or enforcement of the *Canada Transportation Act* shall communicate

or allow to be communicated to any other person any information communicated under subsection (1), except to persons who perform duties or functions under section 53.1 or 53.2 of that Act.

2000, c. 15, s. 12; 2007, c. 19, s. 61.

Communication to Minister of Finance

29.2 (1) Notwithstanding subsection 29(1), the Commissioner may, if requested to do so by the Minister of Finance in accordance with subsection (3), communicate or allow to be communicated to the Minister of Finance any information referred to in subsection (2) that is specifically requested by the Minister of Finance.

Information

(2) The information that may be communicated under this section is

- (a) the identity of any person from whom information was obtained under this Act;
- (b) any information obtained in the course of an inquiry under section 10;
- (c) any information obtained under section 11, 15, 16 or 114;
- (d) any information obtained from a person requesting a certificate under section 102;
- (e) whether notice has been given or information supplied in respect of a particular proposed transaction under section 114; and
- (f) any information collected, received or generated by or on behalf of the Commissioner, including compilations and analyses.

Contents of request

(3) Requests under this section must be in writing and must

- (a) specify the information referred to in any of paragraphs (2)(a) to (f) that is required;
- (b) state that the Minister of Finance requires the information
 - (i) to consider a merger or proposed merger under the *Bank Act*, the *Cooperative Credit Associations Act*, the *Insurance Companies Act* or the *Trust and Loan Companies Act*, or
 - (ii) to permit the Minister of Finance to determine whether he or she should provide the Commissioner with a certificate described in paragraph 94(b) in respect of such a merger or proposed merger;

and

- (c) identify the merger or proposed merger.

Restriction

(4) The information communicated under subsection (1) may be used only for the purpose of making a decision in respect of the merger or proposed merger.

Confidentiality

(5) No person who performs or has performed duties or functions, in the administration or enforcement of the *Bank Act*, the *Cooperative Credit Associations Act*, the *Insurance Companies Act* or the *Trust and Loan Companies Act* shall communicate or allow to be communicated to any other person any information

communicated under subsection (1), except to other persons who perform those duties or functions.

2001, c. 9, s. 578.

PART III MUTUAL LEGAL ASSISTANCE

INTERPRETATION

Definitions

30. The definitions in this section apply in this Part.

"agreement"

« **accord** »

"agreement" means a treaty, convention or other international agreement to which Canada is a party that provides for mutual legal assistance in competition matters, other than a matter in respect of which the *Mutual Legal Assistance in Criminal Matters Act* applies.

"conduct"

« **comportement** »

"conduct" means conduct or matters within the meaning of the relevant agreement in respect of which mutual legal assistance may be requested in accordance with this Part.

"data"

« **données** »

"data" means representations, in any form, of information or concepts.

"foreign state"

« **État étranger** »

"foreign state" means a country other than Canada, and includes any international organization of states.

"judge"

« **juge** »

"judge" means

(a) in Ontario, a judge of the Superior Court of Justice;

(b) in Quebec, a judge of the Superior Court;

(c) in Nova Scotia, British Columbia, Newfoundland, Yukon and the Northwest Territories, a judge of the Supreme Court, and in Nunavut, a judge of the Nunavut Court of Justice;

(d) in New Brunswick, Manitoba, Saskatchewan and Alberta, a judge of the Court of Queen's Bench;

(e) in Prince Edward Island, a judge of the trial division of the Supreme Court; and

(f) in any province or territory, a judge of the Federal Court.

R.S., 1985, c. C-34, s. 30; R.S., 1985, c. 19 (2nd Supp.), s. 26; 2002, c. 7, s. 276(E), c. 8, s. 198, c. 16, s. 3.

FUNCTIONS OF THE MINISTER OF JUSTICE

Agreements respecting mutual legal assistance

30.01 Before Canada enters into an agreement, the Minister of Justice must be satisfied that

(a) the laws of the foreign state that address conduct that is similar to conduct prohibited or reviewable under this Act are, in his or her opinion, substantially similar to the relevant provisions of this Act, regardless of whether the conduct is dealt with criminally or otherwise;

(b) any record or thing provided by Canada under the agreement will be protected by laws respecting confidentiality that are, in his or her opinion, substantially similar to Canadian laws;

(c) the agreement contains provisions in respect of

(i) the circumstances in which Canada may refuse, in whole or in part, to approve a request, and

(ii) the confidentiality protections that will be afforded to any record or thing provided by Canada;

(d) the agreement contains the following undertakings by the foreign state, namely,

(i) that it will provide assistance to Canada comparable in scope to that provided by Canada,

(ii) that any record or thing provided by Canada will be used only for the purpose for which it was requested,

(iii) that any record or thing provided by Canada will be used subject to any terms and conditions on which it was provided, including conditions respecting applicable rights or privileges under Canadian law,

(iv) that, at the conclusion of the investigation or proceedings in respect of which any record or thing was provided by Canada, the foreign state will return the record or thing and any copies to Canada or, with the consent of Canada, return the record or thing to Canada and destroy any copies,

(v) subject to subparagraph (ii), that it will, to the greatest extent possible consistent with its laws, keep confidential any record or thing obtained by it pursuant to its request, and oppose any application by a third party for disclosure of the record or thing, and

(vi) that it will promptly notify the Minister of Justice in the event that the confidentiality protections contained in the agreement have been breached; and

(e) the agreement contains a provision in respect of the manner in which it may be terminated.

2002, c. 16, s. 3.

PUBLICATION OF AGREEMENTS

Publication in *Canada Gazette*

30.02 (1) An agreement must be published in the *Canada Gazette* no later than 60 days after the agreement comes into force, unless it has already been published under subsection (2).

Publication in *Canada Treaty Series*

(2) An agreement may be published in the *Canada Treaty Series* and, if so published, the publication must be no later than 60 days after the agreement comes into force.

Judicial notice

(3) Agreements published in the *Canada Gazette* or the *Canada Treaty Series* are to be judicially noticed.

2002, c. 16, s. 3.

REQUESTS MADE TO CANADA FROM ABROAD

Requests

Requests

30.03 The Minister of Justice is responsible for dealing with a request made by a foreign state under an agreement, in accordance with the agreement and this Part.

2002, c. 16, s. 3.

Search and Seizure

Application of sections 15, 16 and 19

30.04 Sections 15, 16 and 19 apply, with any modifications that the circumstances require, in respect of a search or a seizure under this Part, except to the extent that those sections are inconsistent with this Part.

2002, c. 16, s. 3.

Approval of request for search and seizure

30.05 (1) If the Minister of Justice approves a request of a foreign state to have a search and seizure carried out in respect of conduct that is the subject of the request, the Minister of Justice shall provide the Commissioner with any documents or information necessary to apply for a search warrant.

Application for search warrant

(2) The Commissioner or the authorized representative of the Commissioner shall apply *ex parte* for a search warrant to a judge.

2002, c. 16, s. 3.

Warrant for entry of premises

30.06 (1) A judge to whom an application is made under subsection 30.05(2) may issue a search warrant authorizing the person named in it to execute it anywhere in Canada where the judge is satisfied by information on oath or solemn affirmation that there are reasonable grounds to believe that

(a) conduct that is the subject of a request made by a foreign state is taking place, has taken place or is about to take place;

(b) evidence in respect of the conduct referred to in paragraph (a) will be found in any premises; and

(c) it would not, in the circumstances, be appropriate to make an order under subsection 30.11(1).

Authorization

(2) A search warrant issued under subsection (1) authorizes the person named in it to enter the premises specified in the warrant, subject to any conditions that may be specified in the warrant, and to search the premises for any record or thing specified in the warrant and to examine and seize it.

Hearing re execution

(3) A judge who issues a search warrant under subsection (1) shall fix a time and place for a hearing to consider the execution of the warrant as well as the report referred to in section 30.07.

Contents of warrant

(4) A search warrant issued under subsection (1) must

- (a) set out the time and place for the hearing mentioned in subsection (3);
- (b) state that, at that hearing, an order will be sought for the sending to the foreign state of the records or things seized in execution of the warrant; and
- (c) state that every person from whom a record or thing is seized in execution of the warrant and any person who claims to have an interest in a record or thing so seized may make representations at the hearing before any order is made concerning the record or thing.

Duty of persons in control of premises

(5) Every person who is in possession or control of any premises, record or thing in respect of which a search warrant is issued under subsection (1) shall, on presentation of the warrant, permit the person named in the warrant to enter the premises, search the premises and examine the record or thing and seize it.

Where admission or access refused

(6) Where a person, in executing a search warrant issued under subsection (1), is refused access to any premises, record or thing or where the Commissioner believes on reasonable grounds that access will be refused, the judge who issued the warrant or a judge of the same court, on the *ex parte* application of the Commissioner or the authorized representative of the Commissioner, may by order direct a peace officer to take any steps that the judge considers necessary to give access to the person named in the warrant.

2002, c. 16, s. 3.

Report

30.07 (1) The person who executes a search warrant shall, at least five days before the time of the hearing to consider its execution, file with the court of which the judge who issued the warrant is a member a written report concerning the execution of the warrant that includes a general description of the records or things seized.

Copy to Minister of Justice

(2) The person who files the report under subsection (1) shall send a copy of it to the Minister of Justice promptly after its filing.

2002, c. 16, s. 3.

Sending abroad

30.08 (1) At the hearing referred to in subsection 30.06(3), after having considered any representations of the Minister of Justice, the Commissioner, the person from whom a record or thing was seized and any person who claims to have an interest in the record or thing, the judge who issued the search warrant or another judge of the same court may

- (a) where the judge is not satisfied that the warrant was executed according to its terms and conditions or where the judge is satisfied that an order should not be made under paragraph (b), order that a record or thing seized be returned to
- (i) the person from whom it was seized, if possession of it by that person is lawful, or
 - (ii) the lawful owner or the person who is lawfully entitled to its possession, if the owner or that person is known and possession of the record or thing by the person from whom it was seized is unlawful; or
- (b) in any other case, order that a record or thing seized be sent to the foreign state mentioned in subsection 30.05(1) and include in the order any terms and conditions that the judge considers desirable, including terms and conditions
- (i) necessary to give effect to the request mentioned in that subsection,
 - (ii) in respect of the preservation and return to Canada of any record or thing seized, and
 - (iii) in respect of the protection of the interests of third parties.

Requiring record, etc., at hearing

(2) At the hearing mentioned in subsection (1), the judge may require that a record or thing seized be brought before him or her.

2002, c. 16, s. 3.

Terms and conditions

30.09 No record or thing seized that has been ordered under section 30.08 to be sent to a foreign state shall be so sent until the Minister of Justice is satisfied that the foreign state has agreed to comply with any terms or conditions imposed in respect of the sending abroad of the record or thing.

2002, c. 16, s. 3.

Evidence for Use Abroad

Approval of request to obtain evidence

30.1 (1) If the Minister of Justice approves a request of a foreign state to obtain, by means of an order of a judge, evidence in respect of conduct that is the subject of the request, the Minister of Justice shall provide the Commissioner with any documents or information necessary to apply for the order.

Application for order

(2) The Commissioner or the authorized representative of the Commissioner shall apply *ex parte* to a judge for an order for the gathering of evidence.

2002, c. 16, s. 3.

Evidence-gathering order

30.11 (1) A judge to whom an application is made under subsection 30.1(2) may make an order for the gathering of evidence where the judge is satisfied that there are reasonable grounds to believe that

- (a) conduct that is the subject of a request made by a foreign state is taking place, has taken place or is about to take place; and
- (b) there will be found in Canada evidence in respect of the conduct referred to in paragraph (a).

Provisions of order

(2) An order made under subsection (1) must provide for the manner in which the evidence is to be obtained in order to give effect to the request mentioned in subsection 30.1(1) and may

- (a) order the examination, on oath or otherwise, of a person named in the order, order the person to attend at the place fixed by the person designated under paragraph (c) for the examination and to remain in attendance until he or she is excused by the person so designated, order the person so named, where appropriate, to make a copy of a record or to make a record from data and to bring the copy or record with him or her, and order the person so named to bring with him or her any record or thing in his or her possession or control, in order to produce them to the person before whom the examination takes place;
- (b) order a person named in the order to make a copy of a record or to make a record from data and to produce the copy or record to the person designated under paragraph (c), order the person to produce any record or thing in his or her possession or control to the person so designated and provide, where appropriate, for any affidavit or certificate that, pursuant to the request, is to accompany any copy, record or thing so produced; and
- (c) designate a person before whom the examination referred to in paragraph (a) is to take place or to whom the copies, records, things, affidavits and certificates mentioned in paragraph (b) are to be produced.

Designation of judge

(3) For greater certainty, a judge who makes an order under subsection (1) may designate himself or herself or another person, including a judge of a Canadian or foreign court, under paragraph (2)(c).

Order effective throughout Canada

(4) An order made under subsection (1) may be executed anywhere in Canada.

Terms and conditions of order

(5) An order made under subsection (1) may include any terms or conditions that the judge considers desirable, including those relating to the protection of the interests of a person named in the order and of third parties.

Variation

(6) The judge who made the order under subsection (1) or another judge of the same court may vary its terms and conditions.

Other laws to apply

(7) A person named in an order made under subsection (1) shall answer questions and produce records or things to the person designated under paragraph (2)(c) in accordance with the laws of evidence and procedure in the foreign state that presented the request, but may refuse if answering the questions or producing the records or things would disclose information that is protected by the Canadian law of non-disclosure of information or privilege.

Execution of order to be completed

(8) If a person refuses to answer a question or to produce a record or thing, the person designated under paragraph (2)(c)

(a) may, if he or she is a judge of a Canadian or foreign court, make immediate rulings on any objections or issues within his or her jurisdiction; or

(b) shall, in any other case, continue the examination and ask any other question or request the production of any other record or thing mentioned in the order.

Statement of reasons for refusal

(9) A person named in an order made under subsection (1) who, under subsection (7), refuses to answer one or more questions or to produce certain records or things shall, within seven days, give to the person designated under paragraph (2)(c), unless that person has already ruled on the objection under paragraph (8)(a), a detailed statement in writing of the reasons on which the person bases the refusal to answer each question that the person refuses to answer or to produce each record or thing that the person refuses to produce.

Expenses

(10) A person named in an order made under subsection (1) is entitled to be paid the travel and living expenses to which the person would be entitled if the person were required to attend as a witness before the judge who made the order.

Contents of order

(11) An order made under subsection (1) must state that a person named in the order, and any person who claims an interest in any record or thing provided pursuant to the order, may make representations referred to in subsection 30.13(2) before any order is made under subsection 30.13(1).

2002, c. 16, s. 3.

Report

30.12 (1) A person designated under paragraph 30.11(2)(c) in an order made under subsection 30.11(1) shall make a report to the judge who made the order, or another judge of the same court, accompanied by

- (a) a transcript of every examination held under the order;
- (b) a general description of every record or thing produced to the person under the order and, if the judge so requires, a record or thing itself; and
- (c) a copy of every statement given under subsection 30.11(9) of the reasons for a refusal to answer any question or to produce any record or thing.

Copy to Minister of Justice

- (2) The person designated under paragraph 30.11(2)(c) shall send a copy of the report to the Minister of Justice promptly after it is made.

Refusals

- (3) If any reasons contained in a statement given under subsection 30.11(9) are based on the Canadian law of non-disclosure of information or privilege, a judge to whom a report is made shall determine whether those reasons are well-founded and, if the judge determines that they are, that determination shall be mentioned in any order that the judge makes under section 30.13, but if the judge determines that they are not, the judge shall order that the person named in the order made under subsection 30.11(1) answer the questions or produce the records or things.

Refusals based on foreign law

- (4) A copy of every statement given under subsection 30.11(9) that contains reasons that purport to be based on a law that applies to the foreign state shall be appended to any order that the judge makes under section 30.13.

2002, c. 16, s. 3.

Sending abroad

- 30.13 (1) A judge to whom a report is made under subsection 30.12(1) may order that there be sent to the foreign state mentioned in subsection 30.1(1)
- (a) the report, any transcript referred to in paragraph 30.12(1)(a) and any record or thing produced;
 - (b) a copy of the order made under subsection 30.11(1) accompanied by a copy of any statement given under subsection 30.11(9) that contains reasons that purport to be based on a law that applies to the foreign state; and
 - (c) any determination made under subsection 30.12(3) that the reasons contained in a statement given under subsection 30.11(9) are well-founded.

Terms and conditions

- (2) An order made under subsection (1) may include any terms or conditions that the judge considers desirable, after having considered any representations of the Minister of Justice, the Commissioner, the person who produced any record or thing to the person designated under paragraph 30.11(2)(c) and any person who claims to have an interest in any record or thing so produced, including terms and conditions
 - (a) necessary to give effect to the request mentioned in subsection 30.1(1);
 - (b) in respect of the preservation and return to Canada of any record or thing so produced; and
 - (c) in respect of the protection of the interests of third parties.

Further execution

(3) The execution of an order made under subsection 30.11(1) that was not completely executed because of a refusal, by reason of a law that applies to the foreign state, to answer one or more questions or to produce certain records or things to the person designated under paragraph 30.11(2)(c) may be continued, unless a ruling has already been made on the objection under paragraph 30.11(8)(a), if a court of the foreign state or a person designated by the foreign state determines that the reasons are not well-founded and the foreign state so advises the Minister of Justice.

Leave of judge required

(4) No person named in an order made under subsection 30.11(1) whose reasons for refusing to answer a question or to produce a record or thing are determined not to be well-founded, or whose objection has been ruled against under paragraph 30.11(8)(a), shall, during the continued execution of the order or ruling, refuse to answer that question or to produce that record or thing to the person designated under paragraph 30.11(2)(c), except with the permission of the judge who made the order or ruling or another judge of the same court.

2002, c. 16, s. 3.

Terms and conditions

30.14 No record or thing that has been ordered under section 30.13 to be sent to the foreign state mentioned in subsection 30.1(1) shall be so sent until the Minister of Justice is satisfied that the foreign state has agreed to comply with any terms or conditions imposed in respect of the sending abroad of the record or thing.

2002, c. 16, s. 3.

Approval of request to obtain evidence by video link, etc.

30.15 (1) If the Minister of Justice approves a request of a foreign state to compel a person to provide evidence or a statement in respect of conduct that is the subject of the request by means of technology that permits the virtual presence of the person in the territory over which the foreign state has jurisdiction, or that permits the person to be heard and examined, the Minister of Justice shall provide the Commissioner with any documents or information necessary to apply for the order.

Application for order

(2) The Commissioner or the authorized representative of the Commissioner shall apply *ex parte* to a judge for an order for the taking of evidence or a statement from the person.

2002, c. 16, s. 3.

Order for video link, etc.

30.16 (1) A judge to whom an application is made under subsection 30.15(2) may make an order for the taking of evidence or a statement from a person where the judge is satisfied that there are reasonable grounds to believe that (a) conduct that is the subject of a request made by a foreign state is taking place, has taken place or is about to take place; and

(b) the foreign state believes that the person's evidence or statement would be relevant to the investigation or proceedings in respect of the conduct referred to in paragraph (a).

Provisions of order

(2) An order made under subsection (1) shall order the person

(a) to attend at the place fixed by the judge for the taking of the evidence or statement by means of the technology and to remain in attendance until the person is excused by the authorities of the foreign state;

(b) to answer any questions put to the person by the authorities of the foreign state or by any person authorized by those authorities;

(c) to make a copy of a record or to make a record from data and to bring the copy or record, when appropriate; and

(d) to bring any record or thing in his or her possession or control, when appropriate, in order to show it to the authorities by means of the technology.

Order effective throughout Canada

(3) An order made under subsection (1) may be executed anywhere in Canada.

Terms and conditions of order

(4) An order made under subsection (1) may include any terms or conditions that the judge considers desirable, including those relating to the protection of the interests of the person named in it and of third parties.

Variation

(5) The judge who made the order under subsection (1) or another judge of the same court may vary its terms and conditions.

Expenses

(6) A person named in an order made under subsection (1) is entitled to be paid the travel and living expenses to which the person would be entitled if the person were required to attend as a witness before the judge who made the order.

2002, c. 16, s. 3.

Other laws to apply

30.17 (1) When a person gives evidence or a statement pursuant to an order made under subsection 30.16(1), the person shall give the evidence or statement as though he or she were physically before the court or tribunal outside Canada, in accordance with the laws of evidence and procedure applicable to that court or tribunal, but may refuse to give evidence or a statement, in whole or in part, if giving the evidence or statement would disclose information that is protected by the Canadian law of non-disclosure of information or privilege.

Statement of reasons for refusal

(2) A person named in an order made under subsection 30.16(1) who refuses to give evidence or a statement on the grounds that it would disclose information that is

protected by the Canadian law of non-disclosure of information or privilege shall, within seven days, give to the judge who made the order or another judge of the same court a detailed statement in writing of the reasons on which the person bases each refusal.

Refusals

(3) A judge to whom a statement is given under subsection (2) shall determine whether the reasons for refusal are well-founded and, if the judge determines that they are not, the judge shall order that the person named in the order made under subsection 30.16(1) give the evidence or statement.

Contempt of court in Canada

(4) When a witness gives evidence under section 30.16, the Canadian law relating to contempt of court applies with respect to a refusal by the person to answer a question or to produce a record or thing as ordered by the judge under that section.

2002, c. 16, s. 3.

Arrest warrant

30.18 (1) The judge who made the order under subsection 30.11(1) or 30.16(1) or another judge of the same court may issue a warrant for the arrest of the person named in the order where the judge is satisfied, on an information in writing and under oath or solemn declaration, that

(a) the person did not attend or remain in attendance as required by the order or is about to abscond;

(b) the order was personally served on the person; and

(c) in the case of an order made under subsection 30.11(1), the person is likely to give material evidence and, in the case of an order made under subsection 30.16(1), the foreign state believes that the testimony of the person would be relevant to the investigation or proceedings in respect of the conduct.

Warrant effective throughout Canada

(2) A warrant issued under subsection (1) may be executed anywhere in Canada by any peace officer.

Order

(3) A peace officer who arrests a person in execution of a warrant issued under subsection (1) shall, without delay, bring the person or cause the person to be brought before the judge who issued the warrant or another judge of the same court who may, to ensure compliance with the order made under subsection 30.11(1) or 30.16(1), order that the person be detained in custody or released on recognizance, with or without sureties.

Copy of information

(4) A person who is arrested in execution of a warrant issued under subsection (1) is entitled to receive, on request, a copy of the information on which the warrant was issued.

Lending Exhibits

Approval of loan request

30.19 (1) If the Minister of Justice approves a request of a foreign state under an agreement to have an exhibit that was admitted in evidence in a proceeding in respect of an offence in a court in Canada or in a proceeding before the Tribunal lent to the foreign state, the Minister shall provide the Commissioner with any documents or information necessary to apply for a loan order.

Application for loan order

(2) The Commissioner or the authorized representative of the Commissioner shall apply for a loan order in respect of the exhibit to the court that has possession of the exhibit, or to the Tribunal if it has possession of the exhibit, after having given reasonable notice to the parties to the proceedings and to

(a) to the Attorney General of Canada, in the case of an application to the Federal Court or the Federal Court of Appeal;

(b) the attorney general of the province in which the exhibit is located, in the case of an application to a court other than the Federal Court or the Federal Court of Appeal; or

(c) the Chairman of the Tribunal, in the case of an application to the Tribunal.

Contents of application

(3) An application made under subsection (2) must

(a) contain a description of the exhibit requested to be lent;

(b) designate a person or class of persons to whom the exhibit is sought to be given;

(c) state the reasons for the request and, if any tests are sought to be performed on the exhibit, contain a description of the tests and a statement of the place where they will be performed;

(d) state the place or places to which the exhibit is sought to be removed; and

(e) specify the time at or before which the exhibit is to be returned.

2002, c. 8, s. 198, c. 16, s. 3.

Making of loan order

30.2 (1) If the court or the Tribunal, as the case may be, is satisfied that the foreign state has requested the loan for a fixed period and has agreed to comply with the terms and conditions that the court or Tribunal proposes to include in any loan order, the court or Tribunal may, after having considered any representations of the persons to whom notice of the application was given in accordance with subsection 30.19(2), make a loan order.

Terms of loan order

(2) A loan order made under subsection (1) must

(a) contain a description of the exhibit;

(b) order the person who has possession of the exhibit to give it to a person designated in the order or who is a member of a class of persons so designated;

(c) contain a description of any tests authorized to be performed on the exhibit, as well as a statement of the place where the tests must be performed;

(d) fix the place or places to which the exhibit may be removed; and

(e) fix the time at or before which the exhibit must be returned.

Terms and conditions

(3) A loan order made under subsection (1) may include any terms or conditions that the court or the Tribunal considers desirable, including those relating to the preservation of the exhibit.

2002, c. 16, s. 3.

Variation of loan order

30.21 A court or the Tribunal may vary the terms and conditions of any loan order made by it.

2002, c. 16, s. 3.

Copy of order to custodian

30.22 A copy of a loan order and of an order varying it shall be delivered by the Commissioner to the Minister of Justice and to the person who had possession of the exhibit when the loan order was made.

2002, c. 16, s. 3.

Presumption of continuity

30.23 The burden of proving that an exhibit lent to a foreign state pursuant to a loan order made under subsection 30.2(1) and returned to Canada is not in the same condition as it was when the loan order was made or that it was tampered with after the loan order was made is on the party who makes that allegation and, in the absence of that proof, the exhibit is deemed to have been continuously in the possession of the court that made the loan order or the Tribunal, as the case may be.

2002, c. 16, s. 3.

Appeal

Appeal on question of law

30.24 (1) An appeal lies, with leave, on a question of law alone, to the court of appeal, within the meaning of section 2 of the *Criminal Code*, from an order or decision of a judge or a court in Canada made under this Part, other than an order or decision of the Federal Court or a judge of that Court, if the application for leave to appeal is made to a judge of the court of appeal within fifteen days after the order or decision.

Appeal on question of law

(2) An appeal lies, with leave, on a question of law alone, to the Federal Court of Appeal, from any order or decision of the Federal Court or the Tribunal made under this Part, if the application for leave to appeal is made to a judge of that Court within fifteen days after the order or decision.

2002, c. 8, s. 198, c. 16, s. 3.

EVIDENCE OBTAINED BY CANADA FROM ABROAD

Evidence

30.25 The Minister of Justice shall, on receiving evidence sent by a foreign state in response to a request made by Canada under an agreement, send it promptly to the Commissioner.

2002, c. 16, s. 3.

Foreign records

30.26 (1) In a proceeding in respect of which Parliament has jurisdiction, a record or a copy of a record and any affidavit, certificate or other statement pertaining to the record made by a person who has custody or knowledge of the record, sent to the Minister of Justice by a foreign state in accordance with a Canadian request under an agreement, is not inadmissible in evidence by reason only that a statement contained in it is hearsay or a statement of opinion.

Probative value

(2) For the purpose of determining the probative value of a record or a copy of a record admitted in evidence under Part VII.1 or VIII, the court hearing the matter, or the Tribunal in proceedings before it, may examine the record or copy, receive evidence orally or by affidavit, or by a certificate or other statement pertaining to the record in which a person attests that the certificate or statement is made in conformity with the laws that apply to a foreign state, whether or not the certificate or statement is in the form of an affidavit attested to before an official of the foreign state, including evidence as to the circumstances in which the information contained in the record or copy was written, stored or reproduced, and may draw any reasonable inference from the form or content of the record or copy.

2002, c. 16, s. 3.

Foreign things

30.27 In a proceeding in respect of which Parliament has jurisdiction, a thing and any affidavit, certificate or other statement pertaining to the thing made by a person in a foreign state as to the identity and possession of the thing from the time it was obtained until its sending to the Commissioner by the Minister of Justice in accordance with a Canadian request under an agreement, are not inadmissible in evidence by reason only that the affidavit, certificate or other statement contains hearsay or a statement of opinion.

2002, c. 16, s. 3.

Status of certificate

30.28 An affidavit, certificate or other statement mentioned in section 30.26 or 30.27 is, in the absence of evidence to the contrary, proof of the statements contained in it without proof of the signature or official character of the person appearing to have signed it.

2002, c. 16, s. 3.

GENERAL

Confidentiality of foreign requests and evidence

30.29 (1) No person who performs or has performed duties or functions in the administration or enforcement of this Act shall communicate or allow to be communicated to any other person, except for the purposes of the administration or enforcement of this Act,

(a) the contents of a request made to Canada from a foreign state or the fact of the request having been made; or

(b) the contents of any record or thing obtained from a foreign state pursuant to a Canadian request.

Confidentiality of Canadian evidence

(2) No person who performs or has performed duties or functions in the administration or enforcement of this Act shall communicate or allow to be communicated to any other person, except to a Canadian law enforcement agency or for the purposes of the administration or enforcement of this Act, any information obtained under section 30.06 or 30.11.

Exception

(3) This section does not apply in respect of any information that has been made public.

2002, c. 16, s. 3.

Records or other things already in Commissioner's possession

30.291 (1) For greater certainty, any evidence requested by a foreign state under an agreement may be obtained for the purposes of giving effect to the request only in accordance with the agreement and the procedure set out in this Part, even in the case of records or other things already in the possession of the Commissioner.

Exception

(2) This section does not apply in respect of any information that has been made public or any information the communication of which was authorized by the person who provided the information.

2002, c. 16, s. 3.

Preservation of informal arrangements

30.3 Nothing in this Part shall be construed so as to abrogate or derogate from any arrangement or agreement, other than an agreement under this Part, in respect of cooperation between the Commissioner and a foreign authority.

2002, c. 16, s. 3.

PART IV

SPECIAL REMEDIES

Reduction or removal of customs duties

31. Whenever, as a result of an inquiry under this Act, a judgment of a court or a decision of the Tribunal, it appears to the satisfaction of the Governor in Council that

(a) competition in respect of any article has been prevented or lessened substantially, and
(b) the prevention or lessening of competition is facilitated by customs duties imposed on the article, or on any like article, or can be reduced by a removal or reduction of customs duties so imposed,
the Governor in Council may, by order, remove or reduce any such customs duties.

R.S., 1985, c. C-34, s. 31; R.S., 1985, c. 19 (2nd Supp.), s. 27; 1999, c. 31, s. 48(F).

Powers of Federal Court where certain rights used to restrain trade

32. (1) In any case where use has been made of the exclusive rights and privileges conferred by one or more patents for invention, by one or more trade-marks, by a copyright or by a registered integrated circuit topography, so as to
(a) limit unduly the facilities for transporting, producing, manufacturing, supplying, storing or dealing in any article or commodity that may be a subject of trade or commerce,
(b) restrain or injure, unduly, trade or commerce in relation to any such article or commodity,
(c) prevent, limit or lessen, unduly, the manufacture or production of any such article or commodity or unreasonably enhance the price thereof, or
(d) prevent or lessen, unduly, competition in the production, manufacture, purchase, barter, sale, transportation or supply of any such article or commodity,
the Federal Court may make one or more of the orders referred to in subsection (2) in the circumstances described in that subsection.

Orders

(2) The Federal Court, on an information exhibited by the Attorney General of Canada, may, for the purpose of preventing any use in the manner defined in subsection (1) of the exclusive rights and privileges conferred by any patents for invention, trade-marks, copyrights or registered integrated circuit topographies relating to or affecting the manufacture, use or sale of any article or commodity that may be a subject of trade or commerce, make one or more of the following orders:

(a) declaring void, in whole or in part, any agreement, arrangement or licence relating to that use;
(b) restraining any person from carrying out or exercising any or all of the terms or provisions of the agreement, arrangement or licence;
(c) directing the grant of licences under any such patent, copyright or registered integrated circuit topography to such persons and on such terms and conditions as the court may deem proper or, if the grant and other remedies under this section would appear insufficient to prevent that use, revoking the patent;
(d) directing that the registration of a trade-mark in the register of trade-marks or the registration of an integrated circuit topography in the register of topographies be expunged or amended; and
(e) directing that such other acts be done or omitted as the Court may deem necessary to prevent any such use.

Treaties, etc.

(3) No order shall be made under this section that is at variance with any treaty, convention, arrangement or engagement with any other country respecting patents, trade-marks, copyrights or integrated circuit topographies to which Canada is a party.

R.S., 1985, c. C-34, s. 32; R.S., 1985, c. 10 (4th Supp.), s. 18; 1990, c. 37, s. 29; 2002, c. 16, s. 4(F).

Interim injunction

33. (1) A court may, on application by or on behalf of the Attorney General of Canada or the attorney general of a province, issue an interim injunction forbidding any person named in the application from doing any act or thing that it appears to the court may constitute or be directed toward the commission of an offence, pending the commencement or completion of a proceeding under subsection 34(2) or a prosecution against the person, where it appears to the court, that the person has done, is about to do or is likely to do any act or thing constituting or directed toward the commission of an offence under Part VI or section 66, and that

- (a) if the offence is committed or continued
 - (i) injury to competition that cannot adequately be remedied under any other provision of this Act will result, or
 - (ii) a person is likely to suffer, from the commission of the offence, damage for which the person cannot adequately be compensated under any other provision of this Act and that will be substantially greater than any damage that a person named in the application is likely to suffer from an injunction issued under this subsection in the event that it is subsequently found that an offence under Part VI or section 66 has not been committed, was not about to be committed and was not likely to be committed; or
- (b) in the case of an offence under section 52.1 or 53, if the offence is committed or continued,
 - (i) injury to competition will result, or
 - (ii) one or more persons are likely to suffer damage from the commission of the offence that will be substantially greater than any damage that persons named in the application are likely to suffer from an injunction issued under this subsection in the event that it is subsequently found that an offence under section 52.1 or 53 has not been committed, was not about to be committed and was not likely to be committed.

Deceptive telemarketing or notice

(1.1) An injunction issued in respect of an offence under section 52.1 or 53 may forbid any person from supplying to another person a product that is or is likely to be used for the commission or continuation of such an offence, where the person being supplied or, in the case of a corporation, any of its officers or directors was previously

- (a) convicted of an offence under section 52.1 or 53 or an offence under section 52 in respect of conduct prohibited by section 52.1 or 53; or
- (b) punished for the contravention of an order made under this section or section 34 in respect of the commission, continuation or repetition of an offence referred to in paragraph (a).

Notice of application

(2) Subject to subsection (3), at least forty-eight hours notice of an application for an injunction under subsection (1) shall be given by or on behalf of the Attorney General of Canada or the attorney general of a province, as the case may be, to each person against whom the injunction is sought.

Ex parte application

(3) Where a court to which an application is made under subsection (1) is satisfied that

- (a) subsection (2) cannot reasonably be complied with, or

(b) the urgency of the situation is such that service of notice in accordance with subsection (2) would not be in the public interest, it may proceed with the application *ex parte* but any injunction issued under subsection (1) by the court on *ex parte* application shall have effect only for such period, not exceeding ten days, as is specified in the order.

Terms of injunction

(4) An injunction issued under subsection (1)

(a) shall be in such terms as the court that issues it considers necessary and sufficient to meet the circumstances of the case; and

(b) subject to subsection (3), shall have effect for such period of time as is specified therein.

Extension or cancellation of injunction

(5) A court that issues an injunction under subsection (1), at any time and from time to time on application by or on behalf of the Attorney General of Canada or the attorney general of a province, as the case may be, or by or on behalf of any person to whom the injunction is directed, notice of which application has been given to all other parties thereto, may by order,

(a) notwithstanding subsections (3) and (4), continue the injunction, with or without modification, for such definite period as is stated in the order; or

(b) revoke the injunction.

Duty of applicant

(6) Where an injunction is issued under subsection (1), the Attorney General of Canada or the attorney general of a province, as the case may be, shall proceed as expeditiously as possible to institute and conclude any prosecution or proceedings arising out of the actions on the basis of which the injunction was issued.

Punishment for disobedience

(7) A court may punish any person who contravenes an injunction issued by it under subsection (1) by a fine in the discretion of the court or by imprisonment for a term not exceeding two years.

Definition of "court"

(8) In this section, "court" means the Federal Court or a superior court of criminal jurisdiction as defined in the *Criminal Code*.

R.S., 1985, c. C-34, s. 33; 1993, c. 34, s. 50; 1999, c. 2, s. 10; 2002, c. 16, s. 5.

Prohibition orders

34. (1) Where a person has been convicted of an offence under Part VI, the court may, at the time of the conviction, on the application of the Attorney General of Canada or the attorney general of the province, in addition to any other penalty imposed on the person convicted, prohibit the continuation or repetition of the offence or prohibit the doing of any act or thing, by the person convicted or any other person, that is directed toward the continuation or repetition of the offence.

Idem

(2) Where it appears to a superior court of criminal jurisdiction in proceedings commenced by information of the Attorney General of Canada or the attorney general of the province for the purposes of this section that a person has done, is about to do or is likely to do any act or thing constituting or directed toward the commission of an offence under Part VI, the court may prohibit the commission of the offence or the doing or continuation of any act or thing by that person or any other person constituting or directed toward the commission of the offence.

Prescriptive terms

(2.1) An order made under this section in relation to an offence may require any person

(a) to take such steps as the court considers necessary to prevent the commission, continuation or repetition of the offence; or

(b) to take any steps agreed to by that person and the Attorney General of Canada or the attorney general of the province.

Duration of order

(2.2) An order made under this section applies for a period of ten years unless the court specifies a shorter period.

Variation or rescission

(2.3) An order made under this section may be varied or rescinded in respect of any person to whom the order applies by the court that made the order

(a) where the person and the Attorney General of Canada or the attorney general of the province consent to the variation or rescission; or

(b) where the court, on the application of the person or the Attorney General of Canada or the attorney general of the province, finds that the circumstances that led to the making of the order have changed and, in the circumstances that exist at the time the application is made, the order would not have been made or would have been ineffective in achieving its intended purpose.

Other proceedings

(2.4) No proceedings may be commenced under Part VI against a person against whom an order is sought under subsection (2) on the basis of the same or substantially the same facts as are alleged in proceedings under that subsection.

Appeals to courts of appeal and Federal Court

(3) The Attorney General of Canada or the attorney general of the province or any person against whom an order is made under this section may appeal against the order or a refusal to make an order or the quashing of an order

(a) from a superior court of criminal jurisdiction in the province to the court of appeal of the province, or

(b) from the Federal Court to the Federal Court of Appeal,

as the case may be, on any ground that involves a question of law or, if leave to appeal is granted by the court appealed to within twenty-one days after the judgment appealed from is pronounced or within such extended time as the court appealed to or a judge thereof for special reasons allows, on any ground that appears to that court to be a sufficient ground of appeal.

Appeals to Supreme Court of Canada

(3.1) The Attorney General of Canada or the attorney general of the province or any person against whom an order is made under this section may appeal against the order or a refusal to make an order or the quashing of an order from the court of appeal of the province or the Federal Court of Appeal, as the case may be, to the Supreme Court of Canada on any ground that involves a question of law or, if leave to appeal is granted by the Supreme Court, on any ground that appears to that Court to be a sufficient ground of appeal.

Disposition of appeal

(4) Where the court of appeal or the Supreme Court of Canada allows an appeal, it may quash any order made by the court appealed from, and may make any order that in its opinion the court appealed from could and should have made.

Procedure

(5) Subject to subsections (3) and (4), Part XXI of the *Criminal Code* applies with such modifications as the circumstances require to appeals under this section.

Punishment for disobedience

(6) A court may punish any person who contravenes an order made under this section by a fine in the discretion of the court or by imprisonment for a term not exceeding five years.

Procedure

(7) Any proceedings pursuant to an information of the Attorney General of Canada or the attorney general of a province under this section shall be tried by the court without a jury, and the procedure applicable in injunction proceedings in the superior courts of the province shall, in so far as possible, apply.

Definition of "superior court of criminal jurisdiction"

(8) In this section, "superior court of criminal jurisdiction" means a superior court of criminal jurisdiction as defined in the *Criminal Code*.

R.S., 1985, c. C-34, s. 34; R.S., 1985, c. 19 (2nd Supp.), s. 28, c. 34 (3rd Supp.), s. 8; 1999, c. 2, s. 11; 2002, c. 8, s. 183; 2009, c. 2, s. 409.

Court may require returns

35. (1) Notwithstanding anything contained in Part VI, where any person is convicted of an offence under that Part, the court before whom the person was convicted and sentenced may, from time to time within three years thereafter, require the convicted person to submit such information with respect to the business

of that person as the court deems advisable, and without restricting the generality of the foregoing, the court may require a full disclosure of all transactions, operations or activities since the date of the offence under or with respect to any contracts, agreements or arrangements, actual or tacit, that the convicted person may at any time have entered into with any other person touching or concerning the business of the person convicted.

Punishment

(2) The court may punish any failure to comply with an order under this section by a fine in the discretion of the court or by imprisonment for a term not exceeding two years.

R.S., c. C-23, s. 31.

Recovery of damages

36. (1) Any person who has suffered loss or damage as a result of
(a) conduct that is contrary to any provision of Part VI, or
(b) the failure of any person to comply with an order of the Tribunal or another court under this Act,
may, in any court of competent jurisdiction, sue for and recover from the person who engaged in the conduct or failed to comply with the order an amount equal to the loss or damage proved to have been suffered by him, together with any additional amount that the court may allow not exceeding the full cost to him of any investigation in connection with the matter and of proceedings under this section.

Evidence of prior proceedings

(2) In any action under subsection (1) against a person, the record of proceedings in any court in which that person was convicted of an offence under Part VI or convicted of or punished for failure to comply with an order of the Tribunal or another court under this Act is, in the absence of any evidence to the contrary, proof that the person against whom the action is brought engaged in conduct that was contrary to a provision of Part VI or failed to comply with an order of the Tribunal or another court under this Act, as the case may be, and any evidence given in those proceedings as to the effect of those acts or omissions on the person bringing the action is evidence thereof in the action.

Jurisdiction of Federal Court

(3) For the purposes of any action under subsection (1), the Federal Court is a court of competent jurisdiction.

Limitation

(4) No action may be brought under subsection (1),
(a) in the case of an action based on conduct that is contrary to any provision of Part VI, after two years from
(i) a day on which the conduct was engaged in, or
(ii) the day on which any criminal proceedings relating thereto were finally disposed of,

whichever is the later; and

(b) in the case of an action based on the failure of any person to comply with an order of the Tribunal or another court, after two years from
(i) a day on which the order of the Tribunal or court was contravened, or
(ii) the day on which any criminal proceedings relating thereto were finally disposed of,

whichever is the later.

R.S., 1985, c. C-34, s. 36; R.S., 1985, c. 1 (4th Supp.), s. 11.

PART V

[REPEALED, R.S., 1985, C. 19 (2ND SUPP.), S. 29]

PART VI

OFFENCES IN RELATION TO COMPETITION

Conspiracies, agreements or arrangements between competitors

45. (1) Every person commits an offence who, with a competitor of that person with respect to a product, conspires, agrees or arranges
(a) to fix, maintain, increase or control the price for the supply of the product;
(b) to allocate sales, territories, customers or markets for the production or supply of the product; or
(c) to fix, maintain, control, prevent, lessen or eliminate the production or supply of the product.

Penalty

(2) Every person who commits an offence under subsection (1) is guilty of an indictable offence and liable on conviction to imprisonment for a term not exceeding 14 years or to a fine not exceeding \$25 million, or to both.

Evidence of conspiracy, agreement or arrangement

(3) In a prosecution under subsection (1), the court may infer the existence of a conspiracy, agreement or arrangement from circumstantial evidence, with or without direct evidence of communication between or among the alleged parties to it, but, for greater certainty, the conspiracy, agreement or arrangement must be proved beyond a reasonable doubt.

Defence

(4) No person shall be convicted of an offence under subsection (1) in respect of a conspiracy, agreement or arrangement that would otherwise contravene that subsection if

(a) that person establishes, on a balance of probabilities, that
(i) it is ancillary to a broader or separate agreement or arrangement that includes the same parties, and
(ii) it is directly related to, and reasonably necessary for giving effect to, the objective of that broader or separate agreement or arrangement; and

(b) the broader or separate agreement or arrangement, considered alone, does not contravene that subsection.

Defence

(5) No person shall be convicted of an offence under subsection (1) in respect of a conspiracy, agreement or arrangement that relates only to the export of products from Canada, unless the conspiracy, agreement or arrangement

(a) has resulted in or is likely to result in a reduction or limitation of the real value of exports of a product;

(b) has restricted or is likely to restrict any person from entering into or expanding the business of exporting products from Canada; or

(c) is in respect only of the supply of services that facilitate the export of products from Canada.

Exception

(6) Subsection (1) does not apply if the conspiracy, agreement or arrangement

(a) is entered into only by companies each of which is, in respect of every one of the others, an affiliate; or

(b) is between federal financial institutions and is described in subsection 49(1).

Common law principles — regulated conduct

(7) The rules and principles of the common law that render a requirement or authorization by or under another Act of Parliament or the legislature of a province a defence to a prosecution under subsection 45(1) of this Act, as it read immediately before the coming into force of this section, continue in force and apply in respect of a prosecution under subsection (1).

Definitions

(8) The following definitions apply in this section.

“competitor”

« **concurrent** »

“competitor” includes a person who it is reasonable to believe would be likely to compete with respect to a product in the absence of a conspiracy, agreement or arrangement to do anything referred to in paragraphs (1)(a) to (c).

“price”

« **prix** »

“price” includes any discount, rebate, allowance, price concession or other advantage in relation to the supply of a product.

R.S., 1985, c. C-34, s. 45; R.S., 1985, c. 19 (2nd Supp.), s. 30; 1991, c. 45, s. 547, c. 46, s. 590, c. 47, s. 714; 2009, c. 2, s. 410.

Where application made under section 76, 79, 90.1 or 92

45.1 No proceedings may be commenced under subsection 45(1) against a person on the basis of facts that are the same or substantially the same as the facts on the basis of which an order against that person is sought by the Commissioner under section 76, 79, 90.1 or 92.

Foreign directives

46. (1) Any corporation, wherever incorporated, that carries on business in Canada and that implements, in whole or in part in Canada, a directive, instruction, intimation of policy or other communication to the corporation or any person from a person in a country other than Canada who is in a position to direct or influence the policies of the corporation, which communication is for the purpose of giving effect to a conspiracy, combination, agreement or arrangement entered into outside Canada that, if entered into in Canada, would have been in contravention of section 45, is, whether or not any director or officer of the corporation in Canada has knowledge of the conspiracy, combination, agreement or arrangement, guilty of an indictable offence and liable on conviction to a fine in the discretion of the court.

Limitation

(2) No proceedings may be commenced under this section against a particular company where an application has been made by the Commissioner under section 83 for an order against that company or any other person based on the same or substantially the same facts as would be alleged in proceedings under this section.

R.S., 1985, c. C-34, s. 46; R.S., 1985, c. 19 (2nd Supp.), s. 32; 1999, c. 2, s. 37.

Definition of "bid-rigging"

47. (1) In this section, "bid-rigging" means

- (a) an agreement or arrangement between or among two or more persons whereby one or more of those persons agrees or undertakes not to submit a bid or tender in response to a call or request for bids or tenders, or agrees or undertakes to withdraw a bid or tender submitted in response to such a call or request, or
- (b) the submission, in response to a call or request for bids or tenders, of bids or tenders that are arrived at by agreement or arrangement between or among two or more bidders or tenderers,

where the agreement or arrangement is not made known to the person calling for or requesting the bids or tenders at or before the time when any bid or tender is submitted or withdrawn, as the case may be, by any person who is a party to the agreement or arrangement.

Bid-rigging

(2) Every person who is a party to bid-rigging is guilty of an indictable offence and liable on conviction to a fine in the discretion of the court or to imprisonment for a term not exceeding 14 years, or to both.

Exception

(3) This section does not apply in respect of an agreement or arrangement that is entered into or a submission that is arrived at only by companies each of which is, in respect of every one of the others, an affiliate.

R.S., 1985, c. C-34, s. 47; R.S., 1985, c. 19 (2nd Supp.), s. 33; 2009, c. 2, s. 411.

Conspiracy relating to professional sport

48. (1) Every one who conspires, combines, agrees or arranges with another person

(a) to limit unreasonably the opportunities for any other person to participate, as a player or competitor, in professional sport or to impose unreasonable terms or conditions on those persons who so participate, or
(b) to limit unreasonably the opportunity for any other person to negotiate with and, if agreement is reached, to play for the team or club of his choice in a professional league
is guilty of an indictable offence and liable on conviction to a fine in the discretion of the court or to imprisonment for a term not exceeding five years or to both.

Matters to be considered

(2) In determining whether or not an agreement or arrangement contravenes subsection (1), the court before which the contravention is alleged shall have regard to

(a) whether the sport in relation to which the contravention is alleged is organized on an international basis and, if so, whether any limitations, terms or conditions alleged should, for that reason, be accepted in Canada; and
(b) the desirability of maintaining a reasonable balance among the teams or clubs participating in the same league.

Application

(3) This section applies, and section 45 does not apply, to agreements and arrangements and to provisions of agreements and arrangements between or among teams and clubs engaged in professional sport as members of the same league and between or among directors, officers or employees of those teams and clubs where the agreements, arrangements and provisions relate exclusively to matters described in subsection (1) or to the granting and operation of franchises in the league, and section 45 applies and this section does not apply to all other agreements, arrangements and provisions thereof between or among those teams, clubs and persons.

1974-75-76, c. 76, s. 15.

Agreements or arrangements of federal financial institutions

49. (1) Subject to subsection (2), every federal financial institution that makes an agreement or arrangement with another federal financial institution with respect to
(a) the rate of interest on a deposit,
(b) the rate of interest or the charges on a loan,
(c) the amount or kind of any charge for a service provided to a customer,
(d) the amount or kind of a loan to a customer,
(e) the kind of service to be provided to a customer, or
(f) the person or classes of persons to whom a loan or other service will be made or provided or from whom a loan or other service will be withheld,
and every director, officer or employee of the federal financial institution who knowingly makes such an agreement or arrangement on behalf of the federal financial institution is guilty of an indictable offence and liable to a fine not exceeding ten million dollars or to imprisonment for a term not exceeding five years or to both.

Exceptions

(2) Subsection (1) does not apply in respect of an agreement or arrangement
(a) with respect to a deposit or loan made or payable outside Canada;

- (b) applicable only in respect of the dealings of or the services rendered between federal financial institutions or by two or more federal financial institutions as regards a customer of each of those federal financial institutions where the customer has knowledge of the agreement or by a federal financial institution as regards a customer thereof, on behalf of that customer's customers;
- (c) with respect to a bid for or purchase, sale or underwriting of securities by federal financial institutions or a group including federal financial institutions;
- (d) with respect to the exchange of statistics and credit information, the development and utilization of systems, forms, methods, procedures and standards, the utilization of common facilities and joint research and development in connection therewith, and the restriction of advertising;
- (e) with respect to reasonable terms and conditions of participation in guaranteed or insured loan programs authorized pursuant to an Act of Parliament or of the legislature of a province;
- (f) with respect to the amount of any charge for a service or with respect to the kind of service provided to a customer outside Canada, payable or performed outside Canada, or payable or performed in Canada on behalf of a person who is outside Canada;
- (g) with respect to the persons or classes of persons to whom a loan or other service will be made or provided outside Canada;
- (h) in respect of which the Minister of Finance has certified to the Commissioner that Minister's request for or approval of the agreement or arrangement for the purposes of financial policy and has certified the names of the parties to the agreement or arrangement; or
- (i) that is entered into only by financial institutions each of which is an affiliate of each of the others.

Definition of "federal financial institution"

(3) In this section and section 45, "federal financial institution" means a bank or an authorized foreign bank within the meaning of section 2 of the *Bank Act*, a company to which the *Trust and Loan Companies Act* applies or a company or society to which the *Insurance Companies Act* applies.

Where proceedings commenced under section 76, 79, 90.1 or 92

(4) No proceedings may be commenced under this section against a person on the basis of facts that are the same or substantially the same as the facts on the basis of which an order against that person is sought by the Commissioner under section 76, 79, 90.1 or 92.

R.S., 1985, c. C-34, s. 49; R.S., 1985, c. 19 (2nd Supp.), s. 34; 1991, c. 45, s. 548, c. 46, ss. 591, 593, c. 47, s. 715; 1993, c. 34, s. 51; 1999, c. 2, s. 37, c. 28, s. 153, c. 31, s. 49(F); 2009, c. 2, s. 412.

50. [Repealed, 2009, c. 2, s. 413]

51. [Repealed, 2009, c. 2, s. 413]

False or misleading representations

52. (1) No person shall, for the purpose of promoting, directly or indirectly, the supply or use of a product or for the purpose of promoting, directly or indirectly, any business interest, by any means whatever, knowingly or recklessly make a representation to the public that is false or misleading in a material respect.

Proof of certain matters not required

(1.1) For greater certainty, in establishing that subsection (1) was contravened, it is not necessary to prove that

- (a) any person was deceived or misled;
- (b) any member of the public to whom the representation was made was within Canada; or
- (c) the representation was made in a place to which the public had access.

Permitted representations

(1.2) For greater certainty, a reference to the making of a representation, in this section or in section 52.1, 74.01 or 74.02, includes permitting a representation to be made.

Representations accompanying products

(2) For the purposes of this section, a representation that is

- (a) expressed on an article offered or displayed for sale or its wrapper or container,
 - (b) expressed on anything attached to, inserted in or accompanying an article offered or displayed for sale, its wrapper or container, or anything on which the article is mounted for display or sale,
 - (c) expressed on an in-store or other point-of-purchase display,
 - (d) made in the course of in-store, door-to-door or telephone selling to a person as ultimate user, or
 - (e) contained in or on anything that is sold, sent, delivered, transmitted or made available in any other manner to a member of the public,
- is deemed to be made to the public by and only by the person who causes the representation to be so expressed, made or contained, subject to subsection (2.1).

Representations from outside Canada

(2.1) Where a person referred to in subsection (2) is outside Canada, a representation described in paragraph (2)(a), (b), (c) or (e) is, for the purposes of subsection (1), deemed to be made to the public by the person who imports into Canada the article, thing or display referred to in that paragraph.

Deemed representation to public

(3) Subject to subsection (2), a person who, for the purpose of promoting, directly or indirectly, the supply or use of a product or any business interest, supplies to a wholesaler, retailer or other distributor of a product any material or thing that contains a representation of a nature referred to in subsection (1) is deemed to have made that representation to the public.

General impression to be considered

(4) In a prosecution for a contravention of this section, the general impression conveyed by a representation as well as its literal meaning shall be taken into account in determining whether or not the representation is false or misleading in a material respect.

Offence and punishment

- (5) Any person who contravenes subsection (1) is guilty of an offence and liable
- (a) on conviction on indictment, to a fine in the discretion of the court or to imprisonment for a term not exceeding 14 years, or to both; or
 - (b) on summary conviction, to a fine not exceeding \$200,000 or to imprisonment for a term not exceeding one year, or to both.

Reviewable conduct

- (6) Nothing in Part VII.1 shall be read as excluding the application of this section to a representation that constitutes reviewable conduct within the meaning of that Part.

Duplication of proceedings

- (7) No proceedings may be commenced under this section against a person against whom an order is sought under Part VII.1 on the basis of the same or substantially the same facts as would be alleged in proceedings under this section.

R.S., 1985, c. C-34, s. 52; 1999, c. 2, s. 12; 2009, c. 2, s. 414.

Definition of "telemarketing"

52.1 (1) In this section, "telemarketing" means the practice of using interactive telephone communications for the purpose of promoting, directly or indirectly, the supply or use of a product or for the purpose of promoting, directly or indirectly, any business interest.

Required disclosures

- (2) No person shall engage in telemarketing unless
- (a) disclosure is made, in a fair and reasonable manner at the beginning of each telephone communication, of the identity of the person on behalf of whom the communication is made, the nature of the product or business interest being promoted and the purposes of the communication;
 - (b) disclosure is made, in a fair, reasonable and timely manner, of the price of any product whose supply or use is being promoted and any material restrictions, terms or conditions applicable to its delivery; and
 - (c) disclosure is made, in a fair, reasonable and timely manner, of such other information in relation to the product as may be prescribed by the regulations.

Deceptive telemarketing

- (3) No person who engages in telemarketing shall
- (a) make a representation that is false or misleading in a material respect;
 - (b) conduct or purport to conduct a contest, lottery or game of chance, skill or mixed chance and skill, where
 - (i) the delivery of a prize or other benefit to a participant in the contest, lottery or game is, or is represented to be, conditional on the prior payment of any amount by the participant, or
 - (ii) adequate and fair disclosure is not made of the number and approximate value of the prizes, of the area or areas to which they relate and of any fact within the person's knowledge, that affects materially the chances of winning;

(c) offer a product at no cost, or at a price less than the fair market value of the product, in consideration of the supply or use of another product, unless fair, reasonable and timely disclosure is made of the fair market value of the first product and of any restrictions, terms or conditions applicable to its supply to the purchaser; or

(d) offer a product for sale at a price grossly in excess of its fair market value, where delivery of the product is, or is represented to be, conditional on prior payment by the purchaser.

General impression to be considered

(4) In a prosecution for a contravention of paragraph (3)(a), the general impression conveyed by a representation as well as its literal meaning shall be taken into account in determining whether or not the representation is false or misleading in a material respect.

Exception

(5) The disclosure of information referred to in paragraph (2)(b) or (c) or (3)(b) or (c) must be made during the course of a telephone communication unless it is established by the accused that the information was disclosed within a reasonable time before the communication, by any means, and the information was not requested during the telephone communication.

Due diligence

(6) No person shall be convicted of an offence under this section who establishes that the person exercised due diligence to prevent the commission of the offence.

Offences by employees or agents

(7) Notwithstanding subsection (6), in the prosecution of a corporation for an offence under this section, it is sufficient proof of the offence to establish that it was committed by an employee or agent of the corporation, whether or not the employee or agent is identified, unless the corporation establishes that the corporation exercised due diligence to prevent the commission of the offence.

Liability of officers and directors

(8) Where a corporation commits an offence under this section, any officer or director of the corporation who is in a position to direct or influence the policies of the corporation in respect of conduct prohibited by this section is a party to and guilty of the offence and is liable to the punishment provided for the offence, whether or not the corporation has been prosecuted or convicted, unless the officer or director establishes that the officer or director exercised due diligence to prevent the commission of the offence.

Offence and punishment

(9) Any person who contravenes subsection (2) or (3) is guilty of an offence and liable

- (a) on conviction on indictment, to a fine in the discretion of the court or to imprisonment for a term not exceeding 14 years, or to both; or
- (b) on summary conviction, to a fine not exceeding \$200,000 or to imprisonment for a term not exceeding one year, or to both.

Sentencing

(10) In sentencing a person convicted of an offence under this section, the court shall consider, among other factors, the following aggravating factors:

- (a) the use of lists of persons previously deceived by means of telemarketing;
- (b) characteristics of the persons to whom the telemarketing was directed, including classes of persons who are especially vulnerable to abusive tactics;
- (c) the amount of the proceeds realized by the person from the telemarketing;
- (d) previous convictions of the person under this section or under section 52 in respect of conduct prohibited by this section; and
- (e) the manner in which information is conveyed, including the use of abusive tactics.

1999, c. 2, s. 13; 2009, c. 2, s. 415.

Deceptive notice of winning a prize

53. (1) No person shall, for the purpose of promoting, directly or indirectly, any business interest or the supply or use of a product, send or cause to be sent by electronic or regular mail or by any other means a document or notice in any form, if the document or notice gives the general impression that the recipient has won, will win, or will on doing a particular act win, a prize or other benefit, and if the recipient is asked or given the option to pay money, incur a cost or do anything that will incur a cost.

Non-application

(2) Subsection (1) does not apply if the recipient actually wins the prize or other benefit and the person who sends or causes the notice or document to be sent

- (a) makes adequate and fair disclosure of the number and approximate value of the prizes or benefits, of the area or areas to which they have been allocated and of any fact within the person's knowledge that materially affects the chances of winning;
- (b) distributes the prizes or benefits without unreasonable delay; and
- (c) selects participants or distributes the prizes or benefits randomly, or on the basis of the participants' skill, in any area to which the prizes or benefits have been allocated.

Due diligence

(3) No person shall be convicted of an offence under this section who establishes that the person exercised due diligence to prevent the commission of the offence.

Offences by employees or agents

(4) In the prosecution of a corporation for an offence under this section, it is sufficient proof of the offence to establish that it was committed by an employee or agent of the corporation, whether or not the employee or agent is identified, unless the corporation establishes that the corporation exercised due diligence to prevent the commission of the offence.

Liability of officers and directors

(5) Where a corporation commits an offence under this section, any officer or director of the corporation who is in a position to direct or influence the policies of the corporation in respect of conduct prohibited by this section is a party to and guilty of the offence and is liable to the punishment provided for the offence, whether or not the corporation has been prosecuted or convicted, unless the officer or director establishes that the officer or director exercised due diligence to prevent the commission of the offence.

Offence and punishment

(6) Any person who contravenes this section is guilty of an offence and liable

- (a) on conviction on indictment, to a fine in the discretion of the court or to imprisonment for a term not exceeding 14 years, or to both; or
- (b) on summary conviction, to a fine not exceeding \$200,000 or to imprisonment for a term not exceeding one year, or to both.

Sentencing

(7) In sentencing a person convicted of an offence under this section, the court shall consider, among other factors, the following aggravating factors:

- (a) the use of lists of persons previously deceived by the commission of an offence under section 52.1 or this section;
- (b) the particular vulnerability of recipients of the notices or documents referred to in subsection (1) to abusive tactics;
- (c) the amount of the proceeds realized by the person from the commission of an offence under this section;
- (d) previous convictions of the person under section 52 or 52.1 or this section; and
- (e) the manner in which information is conveyed, including the use of abusive tactics.

R.S., 1985, c. C-34, s. 53; 1999, c. 2, s. 14; 2002, c. 16, s. 6; 2009, c. 2, s. 416.

Double ticketing

54. (1) No person shall supply a product at a price that exceeds the lowest of two or more prices clearly expressed by him or on his behalf, in respect of the product in the quantity in which it is so supplied and at the time at which it is so supplied,

- (a) on the product, its wrapper or container;
- (b) on anything attached to, inserted in or accompanying the product, its wrapper or container or anything on which the product is mounted for display or sale; or
- (c) on an in-store or other point-of-purchase display or advertisement.

Offence and punishment

(2) Any person who contravenes subsection (1) is guilty of an offence and liable on summary conviction to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding one year or to both.

1974-75-76, c. 76, s. 18.

Definition of "multi-level marketing plan"

55. (1) For the purposes of this section (1) and section 55.1, "multi-level marketing plan" means a plan for the supply of a product whereby a participant in the plan receives compensation for the supply of the product to another participant in the

plan who, in turn, receives compensation for the supply of the same or another product to other participants in the plan.

Representations as to compensation

(2) No person who operates or participates in a multi-level marketing plan shall make any representations relating to compensation under the plan to a prospective participant in the plan unless the representations constitute or include fair, reasonable and timely disclosure of the information within the knowledge of the person making the representations relating to

- (a) compensation actually received by typical participants in the plan; or
- (b) compensation likely to be received by typical participants in the plan, having regard to any relevant considerations, including
 - (i) the nature of the product, including its price and availability,
 - (ii) the nature of the relevant market for the product,
 - (iii) the nature of the plan and similar plans, and
 - (iv) whether the person who operates the plan is a corporation, partnership, sole proprietorship or other form of business organization.

Idem

(2.1) A person who operates a multi-level marketing plan shall ensure that any representations relating to compensation under the plan that are made to a prospective participant in the plan by a participant in the plan or by a representative of the person who operates the plan constitute or include fair, reasonable and timely disclosure of the information within the knowledge of the person who operates the plan relating to

- (a) compensation actually received by typical participants in the plan; or
- (b) compensation likely to be received by typical participants in the plan, having regard to any relevant considerations, including those specified in paragraph (2)(b).

Due diligence defence

(2.2) A person accused of an offence under subsection (2.1) shall not be convicted of the offence if the accused establishes that he or she took reasonable precautions and exercised due diligence to ensure

- (a) that no representations relating to compensation under the plan were made by participants in the plan or by representatives of the accused; or
- (b) that any representations relating to compensation under the plan that were made by participants in the plan or by representatives of the accused constituted or included fair, reasonable and timely disclosure of the information referred to in that subsection.

Offence and punishment

(3) Any person who contravenes subsection (2) or (2.1) is guilty of an offence and liable

- (a) on conviction on indictment, to a fine in the discretion of the court or to imprisonment for a term not exceeding five years or to both; or
- (b) on summary conviction, to a fine not exceeding \$200,000 or to imprisonment for a term not exceeding one year, or to both.

Definition of "scheme of pyramid selling"

55.1 (1) For the purposes of this section, "scheme of pyramid selling" means a multi-level marketing plan whereby

(a) a participant in the plan gives consideration for the right to receive compensation by reason of the recruitment into the plan of another participant in the plan who gives consideration for the same right;

(b) a participant in the plan gives consideration, as a condition of participating in the plan, for a specified amount of the product, other than a specified amount of the product that is bought at the seller's cost price for the purpose only of facilitating sales;

(c) a person knowingly supplies the product to a participant in the plan in an amount that is commercially unreasonable; or

(d) a participant in the plan who is supplied with the product

(i) does not have a buy-back guarantee that is exercisable on reasonable commercial terms or a right to return the product in saleable condition on reasonable commercial terms, or

(ii) is not informed of the existence of the guarantee or right and the manner in which it can be exercised.

Pyramid selling

(2) No person shall establish, operate, advertise or promote a scheme of pyramid selling.

Offence and punishment

(3) Any person who contravenes subsection (2) is guilty of an offence and liable

(a) on conviction on indictment, to a fine in the discretion of the court or to imprisonment for a term not exceeding five years or to both; or

(b) on summary conviction, to a fine not exceeding \$200,000 or to imprisonment for a term not exceeding one year, or to both.

1992, c. 14, s. 1; 1999, c. 2, s. 16.

56. to 59. [Repealed, 1999, c. 2, s. 17]

Defence

60. Section 54 does not apply to a person who prints or publishes or otherwise distributes a representation or an advertisement on behalf of another person in Canada if he or she establishes that he or she obtained and recorded the name and address of that other person and accepted the representation or advertisement in good faith for printing, publishing or other distribution in the ordinary course of his or her business.

R.S., 1985, c. C-34, s. 60; 1999, c. 2, s. 17.1.

61. [Repealed, 2009, c. 2, s. 417]

Civil rights not affected

62. Except as otherwise provided in this Part, nothing in this Part shall be construed as depriving any person of any civil right of action.

R.S., c. C-23, s. 39; 1974-75-76, c. 76, s. 18.

PART VII OTHER OFFENCES

OFFENCES

63. [Repealed, R.S., 1985, c. 19 (2nd Supp.), s. 37]

Obstruction

64. (1) No person shall in any manner impede or prevent or attempt to impede or prevent any inquiry or examination under this Act.

Offence and punishment

(2) Every person who contravenes subsection (1) is guilty of an offence and
(a) liable on conviction on indictment to a fine in the discretion of the court or to imprisonment for a term not exceeding 10 years, or to both; or
(b) liable on summary conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding two years, or to both.

R.S., 1985, c. C-34, s. 64; 2009, c. 2, s. 418.

Contravention of Part II provisions

65. (1) Every person who, without good and sufficient cause, the proof of which lies on that person, fails to comply with an order made under section 11 and every person who contravenes subsection 15(5) or 16(2) is guilty of an offence and
(a) liable on conviction on indictment to a fine in the discretion of the court or to imprisonment for a term not exceeding two years, or to both; or
(b) liable on summary conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding two years, or to both.

Failure to supply information

(2) Every person who, without good and sufficient cause, the proof of which lies on that person, contravenes subsection 114(1) is guilty of an offence and liable on conviction on indictment or on summary conviction to a fine not exceeding \$50,000.

Destruction or alteration of records or things

(3) Every person who destroys or alters, or causes to be destroyed or altered, any record or other thing that is required to be produced under section 11 or in respect of which a warrant is issued under section 15 is guilty of an offence and
(a) liable on conviction on indictment to a fine in the discretion of the court or to imprisonment for a term not exceeding 10 years, or to both; or
(b) liable on summary conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding two years, or to both.

Liability of directors

(4) Where a corporation commits an offence under this section, any officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is a party to and guilty of the offence and is liable to the punishment provided for the offence whether or not the corporation has been prosecuted or convicted.

R.S., 1985, c. C-34, s. 65; R.S., 1985, c. 19 (2nd Supp.), s. 38; 1999, c. 2, s. 18; 2009, c. 2, s. 419.

Contravention of subsection 30.06(5)

65.1 (1) Every person who, without good and sufficient cause, the proof of which lies on that person, contravenes subsection 30.06(5) is guilty of an offence and liable on summary conviction or on conviction on indictment to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding two years, or to both.

Destruction or alteration of records or things

(2) Every person who destroys or alters, or causes to be destroyed or altered, any record or thing in respect of which a search warrant is issued under section 30.06 or that is required to be produced pursuant to an order made under subsection 30.11(1) or 30.16(1) is guilty of an offence and liable

(a) on conviction on indictment to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding five years, or to both; or

(b) on summary conviction to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding two years, or to both.

2002, c. 16, s. 7.

Refusal after objection overruled

65.2 (1) Every person who, without good and sufficient cause, the proof of which lies on that person, refuses to answer a question or to produce a record or thing to the person designated under paragraph 30.11(2)(c) after a judge has ruled against the objection under paragraph 30.11(8)(a), is guilty of an offence and liable on conviction on indictment or on summary conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding two years, or to both.

Refusal where no ruling made on objection

(2) Every person is guilty of an offence and liable on summary conviction or on conviction on indictment to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding two years, or to both, who, without good and sufficient cause, the proof of which lies on that person, refuses to answer a question or to produce a record or thing to the person designated under paragraph 30.11(2)(c), where no ruling has been made under paragraph 30.11(8)(a),

(a) without giving the detailed statement required by subsection 30.11(9); or

(b) if the person was previously asked the same question or requested to produce the same record or thing and refused to do so and the reasons on which that person based the previous refusal were determined not to be well-founded by

(i) a judge, if the reasons were based on the Canadian law of non-disclosure of information or privilege, or

(ii) a court of the foreign state or by a person designated by the foreign state, if the reasons were based on a law that applies to the foreign state.

2002, c. 16, s. 7.

Contravention of order under Part VII.1 or VIII

66. Every person who contravenes an order made under Part VII.1, except paragraphs 74.1(1)(c) and (d), or under Part VIII, except subsection 79(3.1), is guilty of an offence and liable

(a) on conviction on indictment, to a fine in the discretion of the court or to imprisonment for a term not exceeding five years, or to both; or

(b) on summary conviction, to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding one year, or to both.

Whistleblowing

66.1 (1) Any person who has reasonable grounds to believe that a person has committed or intends to commit an offence under the Act, may notify the Commissioner of the particulars of the matter and may request that his or her identity be kept confidential with respect to the notification.

Confidentiality

(2) The Commissioner shall keep confidential the identity of a person who has notified the Commissioner under subsection (1) and to whom an assurance of confidentiality has been provided by any person who performs duties or functions in the administration or enforcement of this Act.

1999, c. 2, s. 19.

Prohibition

66.2 (1) No employer shall dismiss, suspend, demote, discipline, harass or otherwise disadvantage an employee, or deny an employee a benefit of employment, by reason that

(a) the employee, acting in good faith and on the basis of reasonable belief, has disclosed to the Commissioner that the employer or any other person has committed or intends to commit an offence under this Act;

(b) the employee, acting in good faith and on the basis of reasonable belief, has refused or stated an intention of refusing to do anything that is an offence under this Act;

(c) the employee, acting in good faith and on the basis of reasonable belief, has done or stated an intention of doing anything that is required to be done in order that an offence not be committed under this Act; or

(d) the employer believes that the employee will do anything referred to in paragraph (a) or (c) or will refuse to do anything referred to in paragraph (b).

Saving

(2) Nothing in this section impairs any right of an employee either at law or under an employment contract or collective agreement.

Definitions

(3) In this section, "employee" includes an independent contractor and "employer" has the corresponding meaning.

1999, c. 2, s. 19.

PROCEDURE

Procedure for enforcing punishment

67. (1) Where an indictment is found against an accused, other than a corporation, for any offence against this Act, the accused may elect to be tried without a jury and where he so elects, he shall be tried by the judge presiding at the court at which the indictment is found, or the judge presiding at any subsequent sittings of that court, or at any court where the indictment comes on for trial.

Application of Criminal Code

(2) Where an election is made under subsection (1), the proceedings subsequent to the election shall be regulated in so far as may be applicable by the provisions of the *Criminal Code* relating to the trial of indictable offences by a judge without a jury.

Jurisdiction of courts

(3) No court other than a superior court of criminal jurisdiction, as defined in the *Criminal Code*, has power to try any offence under section 45, 46, 47, 48 or 49.

Corporations to be tried without jury

(4) Notwithstanding anything in the *Criminal Code* or in any other statute or law, a corporation charged with an offence under this Act shall be tried without a jury.

Option as to procedure under subsection 34(2)

(5) In any case where subsection 34(2) is applicable, the Attorney General of Canada or the attorney general of the province may in his discretion institute proceedings either by way of an information under that subsection or by way of prosecution.

Limitation period

(6) Proceedings in respect of an offence that is declared by this Act to be punishable on summary conviction may be instituted at any time within but not later than two years after the time when the subject-matter of the proceedings arose.

R.S., c. C-23, s. 44; 1974-75-76, c. 76, s. 19.

Venue of prosecutions

68. Notwithstanding any other Act, a prosecution for an offence under Part VI or section 66 may be brought, in addition to any place in which the prosecution may be brought by virtue of the *Criminal Code*,

(a) where the accused is a corporation, in any territorial division in which the corporation has its head office or a branch office, whether or not the branch office is provided for in any Act or instrument relating to the incorporation or organization of the corporation; and

(b) where the accused is not a corporation, in any territorial division in which the accused resides or has a place of business.

R.S., 1985, c. C-34, s. 68; 1999, c. 2, s. 20.

Definitions

69. (1) In this section,

"agent of a participant"

« **agent d'un participant** »

"agent of a participant" means a person who by a record admitted in evidence under this section appears to be or is otherwise proven to be an officer, agent, servant, employee or representative of a participant;

"document" [Repealed, R.S., 1985, c. 19 (2nd Supp.), s. 40]

"participant"

« **participant** »

"participant" means any person against whom proceedings have been instituted under this Act and in the case of a prosecution means any accused and any person who, although not accused, is alleged in the charge or indictment to have been a co-conspirator or otherwise party or privy to the offence charged.

Evidence against a participant

(2) In any proceedings before the Tribunal or in any prosecution or proceedings before a court under or pursuant to this Act,

(a) anything done, said or agreed on by an agent of a participant shall, in the absence of evidence to the contrary, be deemed to have been done, said or agreed on, as the case may be, with the authority of that participant;

(b) a record written or received by an agent of a participant shall, in the absence of evidence to the contrary, be deemed to have been written or received, as the case may be, with the authority of that participant; and

(c) a record proved to have been in the possession of a participant or on premises used or occupied by a participant or in the possession of an agent of a participant shall be admitted in evidence without further proof thereof and is *prima facie* proof

(i) that the participant had knowledge of the record and its contents,

(ii) that anything recorded in or by the record as having been done, said or agreed on by any participant or by an agent of a participant was done, said or agreed on as recorded and, where anything is recorded in or by the record as having been done, said or agreed on by an agent of a participant, that it was done, said or agreed on with the authority of that participant, and

(iii) that the record, where it appears to have been written by any participant or by an agent of a participant, was so written and, where it appears to have been written by an agent of a participant, that it was written with the authority of that participant.

R.S., 1985, c. C-34, s. 69; R.S., 1985, c. 19 (2nd Supp.), s. 40.

Admissibility of statistics

70. (1) A collection, compilation, analysis, abstract or other record or report of statistical information prepared or published under the authority of

(a) the *Statistics Act*, or

(b) any other enactment of Parliament or of the legislature of a province, is admissible in evidence in any proceedings before the Tribunal or in any prosecution or proceedings before a court under or pursuant to this Act.

Idem

(2) On request from the Minister or the Commissioner

(a) the Chief Statistician of Canada or an officer of any department or agency of the Government of Canada the functions of which include the gathering of statistics shall, and

(b) an officer of any department or agency of the government of a province the functions of which include the gathering of statistics may, compile from his or its records a statement of statistics relating to any industry or sector thereof, in accordance with the terms of the request, and any such statement is admissible in evidence in any proceedings before the Tribunal or in any prosecution or proceedings before a court under or pursuant to this Act.

Privileged information not affected

(3) Nothing in this section compels or authorizes the Chief Statistician of Canada or any officer of a department or agency of the Government of Canada to disclose any particulars relating to an individual or business in a manner that is prohibited by any provision of an enactment of Parliament or of a provincial legislature designed for the protection of those particulars.

Certificate

(4) In any proceedings before the Tribunal, or in any prosecution or proceedings before a court under or pursuant to this Act, a certificate purporting to be signed by the Chief Statistician of Canada or the officer of the department or agency of the Government of Canada or of a province under whose supervision a record, report or statement of statistics referred to in this section was prepared, setting out that the record, report or statement of statistics attached thereto was prepared under his supervision, is evidence of the facts alleged therein without proof of the signature or official character of the person by whom it purports to be signed.

R.S., 1985, c. C-34, s. 70; R.S., 1985, c. 19 (2nd Supp.), s. 41; 1999, c. 2, s. 37.

Statistics collected by sampling methods

71. A collection, compilation, analysis, abstract or other record or report of statistics collected by sampling methods by or on behalf of the Commissioner or any other party to proceedings before the Tribunal, or to a prosecution or proceedings before a court under or pursuant to this Act, is admissible in evidence in that prosecution or those proceedings.

R.S., 1985, c. C-34, s. 71; R.S., 1985, c. 19 (2nd Supp.), s. 42; 1999, c. 2, s. 37.

Notice

72. (1) No record, report or statement of statistical information or statistics referred to in section 70 or 71 shall be received in evidence before the Tribunal or court unless the person intending to produce the record, report or statement in evidence has given to the person against whom it is intended to be produced reasonable notice together with a copy of the record, report or statement and, in the case of a record or report of statistics referred to in section 71, together with the names and qualifications of those persons who participated in the preparation thereof.

Attendance of statistician

(2) Any person against whom a record or report of statistics referred to in section 70 is produced may require, for the purposes of cross-examination, the attendance of any person under whose supervision the record or report was prepared.

Idem

(3) Any person against whom a record or report of statistics referred to in section 71 is produced may require, for the purposes of cross-examination, the attendance of any person who participated in the preparation of the record or report.

R.S., 1985, c. C-34, s. 72; R.S., 1985, c. 19 (2nd Supp.), s. 43.

Jurisdiction of Federal Court

73. (1) Subject to this section, the Attorney General of Canada may institute and conduct any prosecution or other proceedings under section 34, any of sections 45 to 49 or, if the proceedings are on indictment, under section 52, 52.1, 53, 55, 55.1 or 66, in the Federal Court, and for the purposes of the prosecution or other proceedings, the Federal Court has all the powers and jurisdiction of a superior court of criminal jurisdiction under the *Criminal Code* and under this Act.

No jury

(2) The trial of an offence under Part VI or section 66 in the Federal Court shall be without a jury.

Appeal

(3) An appeal lies from the Federal Court to the Federal Court of Appeal and from the Federal Court of Appeal to the Supreme Court of Canada in any prosecution or proceedings under Part VI or section 66 of this Act as provided in Part XXI of the *Criminal Code* for appeals from a trial court and from a court of appeal.

Proceedings optional

(4) Proceedings under subsection 34(2) may in the discretion of the Attorney General of Canada be instituted in either the Federal Court or a superior court of criminal jurisdiction in the province but no prosecution shall be instituted against an individual in the Federal Court in respect of an offence under Part VI or section 66 without the consent of the individual.

R.S., 1985, c. C-34, s. 73; 1999, c. 2, s. 21; 2002, c. 8, ss. 183, 198, c. 16, s. 8; 2009, c. 2, s. 421.

74. [Repealed, 1999, c. 2, s. 22]

PART VII.1

DECEPTIVE MARKETING PRACTICES

REVIEWABLE MATTERS

Misrepresentations to public

74.01 (1) A person engages in reviewable conduct who, for the purpose of promoting, directly or indirectly, the supply or use of a product or for the purpose of promoting, directly or indirectly, any business interest, by any means whatever,

- (a) makes a representation to the public that is false or misleading in a material respect;
- (b) makes a representation to the public in the form of a statement, warranty or guarantee of the performance, efficacy or length of life of a product that is not based on an adequate and proper test thereof, the proof of which lies on the person making the representation; or
- (c) makes a representation to the public in a form that purports to be
 - (i) a warranty or guarantee of a product, or
 - (ii) a promise to replace, maintain or repair an article or any part thereof or to repeat or continue a service until it has achieved a specified result,

if the form of purported warranty or guarantee or promise is materially misleading or if there is no reasonable prospect that it will be carried out.

Ordinary price: suppliers generally

(2) Subject to subsection (3), a person engages in reviewable conduct who, for the purpose of promoting, directly or indirectly, the supply or use of a product or for the purpose of promoting, directly or indirectly, any business interest, by any means whatever, makes a representation to the public concerning the price at which a product or like products have been, are or will be ordinarily supplied where suppliers generally in the relevant geographic market, having regard to the nature of the product,

(a) have not sold a substantial volume of the product at that price or a higher price within a reasonable period of time before or after the making of the representation, as the case may be; and

(b) have not offered the product at that price or a higher price in good faith for a substantial period of time recently before or immediately after the making of the representation, as the case may be.

Ordinary price: supplier's own

(3) A person engages in reviewable conduct who, for the purpose of promoting, directly or indirectly, the supply or use of a product or for the purpose of promoting, directly or indirectly, any business interest, by any means whatever, makes a representation to the public as to price that is clearly specified to be the price at which a product or like products have been, are or will be ordinarily supplied by the person making the representation where that person, having regard to the nature of the product and the relevant geographic market,

(a) has not sold a substantial volume of the product at that price or a higher price within a reasonable period of time before or after the making of the representation, as the case may be; and

(b) has not offered the product at that price or a higher price in good faith for a substantial period of time recently before or immediately after the making of the representation, as the case may be.

References to time in subsections (2) and (3)

(4) For greater certainty, whether the period of time to be considered in paragraphs (2)(a) and (b) and (3)(a) and (b) is before or after the making of the representation depends on whether the representation relates to

(a) the price at which products have been or are supplied; or

(b) the price at which products will be supplied.

Saving

(5) Subsections (2) and (3) do not apply to a person who establishes that, in the circumstances, a representation as to price is not false or misleading in a material respect.

(6) [Repealed, 2009, c. 2, s. 422]

Representation as to reasonable test and publication of testimonials

74.02 A person engages in reviewable conduct who, for the purpose of promoting, directly or indirectly, the supply or use of any product, or for the purpose of promoting, directly or indirectly, any business interest, makes a representation to the public that a test has been made as to the performance, efficacy or length of life of a product by any person, or publishes a testimonial with respect to a product, unless the person making the representation or publishing the testimonial can establish that

(a) such a representation or testimonial was previously made or published by the person by whom the test was made or the testimonial was given, or
(b) such a representation or testimonial was, before being made or published, approved and permission to make or publish it was given in writing by the person by whom the test was made or the testimonial was given, and the representation or testimonial accords with the representation or testimonial previously made, published or approved.

1999, c. 2, s. 22.

Representations accompanying products

74.03 (1) For the purposes of sections 74.01 and 74.02, a representation that is
(a) expressed on an article offered or displayed for sale or its wrapper or container,
(b) expressed on anything attached to, inserted in or accompanying an article offered or displayed for sale, its wrapper or container, or anything on which the article is mounted for display or sale,
(c) expressed on an in-store or other point-of-purchase display,
(d) made in the course of in-store, door-to-door or telephone selling to a person as ultimate user, or
(e) contained in or on anything that is sold, sent, delivered, transmitted or made available in any other manner to a member of the public,
is deemed to be made to the public by and only by the person who causes the representation to be so expressed, made or contained, subject to subsection (2).

Representations from outside Canada

(2) Where a person referred to in subsection (1) is outside Canada, a representation described in paragraph (1)(a), (b), (c) or (e) is, for the purposes of sections 74.01 and 74.02, deemed to be made to the public by the person who imports into Canada the article, thing or display referred to in that paragraph.

Deemed representation to public

(3) Subject to subsection (1), a person who, for the purpose of promoting, directly or indirectly, the supply or use of a product or any business interest, supplies to a wholesaler, retailer or other distributor of a product any material or thing that contains a representation of a nature referred to in section 74.01 is deemed to make that representation to the public.

Certain matters need not be established

(4) For greater certainty, in proceedings under sections 74.01 and 74.02, it is not necessary to establish that
(a) any person was deceived or misled;

- (b) any member of the public to whom the representation was made was within Canada; or
- (c) the representation was made in a place to which the public had access.

General impression to be considered

(5) In proceedings under sections 74.01 and 74.02, the general impression conveyed by a representation as well as its literal meaning shall be taken into account in determining whether or not the person who made the representation engaged in the reviewable conduct.

1999, c. 2, s. 22; 2009, c. 2, s. 423.

Definition of "bargain price"

74.04 (1) For the purposes of this section, "bargain price" means

- (a) a price that is represented in an advertisement to be a bargain price by reference to an ordinary price or otherwise; or
- (b) a price that a person who reads, hears or sees the advertisement would reasonably understand to be a bargain price by reason of the prices at which the product advertised or like products are ordinarily supplied.

Bait and switch selling

(2) A person engages in reviewable conduct who advertises at a bargain price a product that the person does not supply in reasonable quantities having regard to the nature of the market in which the person carries on business, the nature and size of the person's business and the nature of the advertisement.

Saving

(3) Subsection (2) does not apply to a person who establishes that

- (a) the person took reasonable steps to obtain in adequate time a quantity of the product that would have been reasonable having regard to the nature of the advertisement, but was unable to obtain such a quantity by reason of events beyond the person's control that could not reasonably have been anticipated;
- (b) the person obtained a quantity of the product that was reasonable having regard to the nature of the advertisement, but was unable to meet the demand therefor because that demand surpassed the person's reasonable expectations; or
- (c) after becoming unable to supply the product in accordance with the advertisement, the person undertook to supply the same product or an equivalent product of equal or better quality at the bargain price and within a reasonable time to all persons who requested the product and who were not supplied with it during the time when the bargain price applied, and the person fulfilled the undertaking.

1999, c. 2, s. 22.

Sale above advertised price

74.05 (1) A person engages in reviewable conduct who advertises a product for sale or rent in a market and, during the period and in the market to which the advertisement relates, supplies the product at a price that is higher than the price advertised.

Saving

(2) This section does not apply

- (a) in respect of an advertisement that appears in a catalogue in which it is prominently stated that the prices contained in it are subject to error if the person establishes that the price advertised is in error;
- (b) in respect of an advertisement that is immediately followed by another advertisement correcting the price mentioned in the first advertisement;
- (c) in respect of the supply of a security obtained on the open market during a period when the prospectus relating to that security is still current; or
- (d) in respect of the supply of a product by or on behalf of a person who is not engaged in the business of dealing in that product.

Application

(3) For the purpose of this section, the market to which an advertisement relates is the market that the advertisement could reasonably be expected to reach, unless the advertisement defines the market more narrowly by reference to a geographical area, store, department of a store, sale by catalogue or otherwise.

1999, c. 2, s. 22.

Promotional contests

74.06 A person engages in reviewable conduct who, for the purpose of promoting, directly or indirectly, the supply or use of a product, or for the purpose of promoting, directly or indirectly, any business interest, conducts any contest, lottery, game of chance or skill, or mixed chance and skill, or otherwise disposes of any product or other benefit by any mode of chance, skill or mixed chance and skill whatever, where

- (a) adequate and fair disclosure is not made of the number and approximate value of the prizes, of the area or areas to which they relate and of any fact within the knowledge of the person that affects materially the chances of winning;
- (b) distribution of the prizes is unduly delayed; or
- (c) selection of participants or distribution of prizes is not made on the basis of skill or on a random basis in any area to which prizes have been allocated.

1999, c. 2, s. 22.

Saving

74.07 (1) Sections 74.01 to 74.06 do not apply to a person who prints or publishes or otherwise disseminates a representation, including an advertisement, on behalf of another person in Canada, where the person establishes that the person obtained and recorded the name and address of that other person and accepted the representation in good faith for printing, publishing or other dissemination in the ordinary course of that person's business.

Non-application

(2) Sections 74.01 to 74.06 do not apply in respect of conduct prohibited by sections 52.1, 53, 55 and 55.1.

1999, c. 2, s. 22; 2002, c. 16, s. 9.

Civil rights not affected

74.08 Except as otherwise provided in this Part, nothing in this Part shall be construed as depriving any person of a civil right of action.

1999, c. 2, s. 22.

ADMINISTRATIVE REMEDIES

Definition of "court"

74.09 In sections 74.1 to 74.14 and 74.18, "court" means the Tribunal, the Federal Court or the superior court of a province.

1999, c. 2, s. 22; 2002, c. 8, s. 183.

Determination of reviewable conduct and judicial order

74.1 (1) Where, on application by the Commissioner, a court determines that a person is engaging in or has engaged in reviewable conduct under this Part, the court may order the person

- (a) not to engage in the conduct or substantially similar reviewable conduct;
- (b) to publish or otherwise disseminate a notice, in such manner and at such times as the court may specify, to bring to the attention of the class of persons likely to have been reached or affected by the conduct, the name under which the person carries on business and the determination made under this section, including
 - (i) a description of the reviewable conduct,
 - (ii) the time period and geographical area to which the conduct relates, and
 - (iii) a description of the manner in which any representation or advertisement was disseminated, including, where applicable, the name of the publication or other medium employed;
- (c) to pay an administrative monetary penalty, in any manner that the court specifies, in an amount not exceeding
 - (i) in the case of an individual, \$750,000 and, for each subsequent order, \$1,000,000, or
 - (ii) in the case of a corporation, \$10,000,000 and, for each subsequent order, \$15,000,000; and
- (d) in the case of conduct that is reviewable under paragraph 74.01(1)(a), to pay an amount, not exceeding the total of the amounts paid to the person for the products in respect of which the conduct was engaged in, to be distributed among the persons to whom the products were sold — except wholesalers, retailers or other distributors, to the extent that they have resold or distributed the products — in any manner that the court considers appropriate.

Duration of order

- (2) An order made under paragraph (1)(a) applies for a period of ten years unless the court specifies a shorter period.

Saving

- (3) No order may be made against a person under paragraph (1)(b), (c) or (d) if the person establishes that the person exercised due diligence to prevent the reviewable conduct from occurring.

Purpose of order

- (4) The terms of an order made against a person under paragraph (1)(b), (c) or (d) shall be determined with a view to promoting conduct by that person that is in conformity with the purposes of this Part and not with a view to punishment.

Aggravating or mitigating factors

(5) Any evidence of the following shall be taken into account in determining the amount of an administrative monetary penalty under paragraph (1)(c):

- (a) the reach of the conduct within the relevant geographic market;
- (b) the frequency and duration of the conduct;
- (c) the vulnerability of the class of persons likely to be adversely affected by the conduct;
- (d) the materiality of any representation;
- (e) the likelihood of self-correction in the relevant geographic market;
- (f) the effect on competition in the relevant market;
- (g) the gross revenue from sales affected by the conduct;
- (h) the financial position of the person against whom the order is made;
- (i) the history of compliance with this Act by the person against whom the order is made;
- (j) any decision of the court in relation to an application for an order under paragraph (1)(d);
- (k) any other amounts paid or ordered to be paid by the person against whom the order is made as a refund or as restitution or other compensation in respect of the conduct; and
- (l) any other relevant factor.

Meaning of subsequent order

(6) For the purposes of paragraph (1)(c), an order made against a person in respect of conduct that is reviewable under paragraph 74.01(1)(a), (b) or (c), subsection 74.01(2) or (3) or section 74.02, 74.04, 74.05 or 74.06 is a subsequent order if

- (a) an order was previously made against the person under this section in respect of conduct reviewable under the same provision;
- (b) the person was previously convicted of an offence under the provision of Part VI, as that Part read immediately before the coming into force of this Part, that corresponded to the provision of this Part;
- (c) in the case of an order in respect of conduct reviewable under paragraph 74.01(1)(a), the person was previously convicted of an offence under section 52, or under paragraph 52(1)(a) as it read immediately before the coming into force of this Part; or
- (d) in the case of an order in respect of conduct reviewable under subsection 74.01(2) or (3), the person was previously convicted of an offence under paragraph 52(1)(d) as it read immediately before the coming into force of this Part.

Amounts already paid

(7) In determining an amount to be paid under paragraph (1)(d), the court shall take into account any other amounts paid or ordered to be paid by the person against whom the order is made as a refund or as restitution or other compensation in respect of the products.

Implementation of the order

(8) The court may specify in an order made under paragraph (1)(d) any terms that it considers necessary for the order's implementation, including terms

- (a) specifying how the payment is to be administered;

- (b) respecting the appointment of an administrator to administer the payment and specifying the terms of administration;
- (c) requiring the person against whom the order is made to pay the administrative costs related to the payment as well as the fees to be paid to an administrator;
- (d) requiring that potential claimants be notified in the time and manner specified by the court;
- (e) specifying the time and manner for making claims;
- (f) specifying the conditions for the eligibility of claimants, including conditions relating to the return of the products to the person against whom the order is made; and
- (g) providing for the manner in which, and the terms on which, any amount of the payment that remains unclaimed or undistributed is to be dealt with.

Variation of terms

- (9) On application by the Commissioner or the person against whom the order is made, the court may vary any term that is specified under subsection (8).

1999, c. 2, s. 22; 2009, c. 2, s. 424.

Temporary order

74.11 (1) Where, on application by the Commissioner, a court finds a strong *prima facie* case that a person is engaging in reviewable conduct under this Part, the court may order the person not to engage in that conduct or substantially similar reviewable conduct if the court is satisfied that

- (a) serious harm is likely to ensue unless the order is issued; and
- (b) the balance of convenience favours issuing the order.

Duration

- (2) Subject to subsection (5), the order has effect, or may be extended on application by the Commissioner, for such period as the court considers necessary and sufficient to meet the circumstances of the case.

Notice of application by Commissioner

- (3) Subject to subsection (4), at least forty-eight hours notice of an application referred to in subsection (1) or (2) shall be given by or on behalf of the Commissioner to the person in respect of whom the order or extension is sought.

Ex parte application

- (4) The court may proceed *ex parte* with an application made under subsection (1) where it is satisfied that subsection (3) cannot reasonably be complied with or that the urgency of the situation is such that service of notice in accordance with subsection (3) would not be in the public interest.

Duration of ex parte order

- (5) An order issued *ex parte* shall have effect for such period as is specified in it, not exceeding seven days unless, on further application made on notice as provided in subsection (3), the court extends the order for such additional period as it considers necessary and sufficient.

Duty of Commissioner

(6) Where an order issued under this section is in effect, the Commissioner shall proceed as expeditiously as possible to complete the inquiry under section 10 arising out of the conduct in respect of which the order was issued.

1999, c. 2, s. 22; 2002, c. 16, s. 10.

Interim injunction

74.111 (1) If, on application by the Commissioner, a court finds a strong *prima facie* case that a person is engaging in or has engaged in conduct that is reviewable under paragraph 74.01(1)(a), and the court is satisfied that the person owns or has possession or control of articles within the jurisdiction of the court and is disposing of or is likely to dispose of them by any means, and that the disposal of the articles will substantially impair the enforceability of an order made under paragraph 74.1(1)(d), the court may issue an interim injunction forbidding the person or any other person from disposing of or otherwise dealing with the articles, other than in the manner and on the terms specified in the injunction.

Statement to be included

(2) Any application for an injunction under subsection (1) shall include a statement that the Commissioner has applied for an order under paragraph 74.1(1)(d), or that the Commissioner intends to apply for an order under that paragraph if the Commissioner applies for an order under paragraph 74.1(1)(a).

Duration

(3) Subject to subsection (6), the injunction has effect, or may be extended on application by the Commissioner, for any period that the court considers sufficient to meet the circumstances of the case.

Notice of application by Commissioner

(4) Subject to subsection (5), at least 48 hours' notice of an application referred to in subsection (1) or (3) shall be given by or on behalf of the Commissioner to the person in respect of whom the injunction or extension is sought.

Ex parte application

(5) The court may proceed *ex parte* with an application made under subsection (1) if it is satisfied that subsection (4) cannot reasonably be complied with or where the urgency of the situation is such that service of the notice in accordance with subsection (4) might defeat the purpose of the injunction or would otherwise not be in the public interest.

Duration of ex parte injunction

(6) An injunction issued *ex parte* has effect for the period that is specified in it, not exceeding seven days unless, on further application made on notice as provided in subsection (4), the court extends the injunction for any additional period that it considers sufficient.

Submissions to set aside

(7) On application of the person against whom an *ex parte* injunction is made, the court may make an order setting aside the injunction or varying it subject to any conditions that it considers appropriate.

Duty of Commissioner

(8) If an injunction issued under this section is in effect, the Commissioner shall proceed as expeditiously as possible to complete any inquiry under section 10 arising out of the conduct in respect of which the injunction was issued.

Definitions

(9) The following definitions apply in this section.

"dispose"

« **disposer** »

"dispose", in relation to an article, includes removing it from the jurisdiction of the court, depleting its value, leasing it to another person or creating any security interest in it.

"security interest"

« **garantie** »

"security interest" means any interest or right in property that secures payment or performance of an obligation and includes an interest or right created by or arising out of a debenture, mortgage, hypothec, lien, pledge, charge, security, deemed or actual trust, assignment or encumbrance of any kind whatever, however or whenever arising, created, deemed to arise or otherwise provided for.

2009, c. 2, s. 425.

Consent agreement

74.12 (1) The Commissioner and a person in respect of whom the Commissioner has applied or may apply for an order under this Part may sign a consent agreement.

Terms of consent agreement

(2) The consent agreement shall be based on terms that could be the subject of an order of a court against that person, and may include other terms, whether or not they could be imposed by the court.

Registration

(3) The consent agreement may be filed with the court for immediate registration.

Effect of registration

(4) Upon registration of the consent agreement, the proceedings, if any, are terminated and the consent agreement has the same force and effect, and proceedings may be taken, as if it were an order of the court.

1999, c. 2, s. 22; 2002, c. 16, s. 11.

Rescission or variation of consent agreement or order

74.13 The court may rescind or vary a consent agreement that it has registered or an order that it has made under this Part, on application by the Commissioner or the person who consented to the agreement, or the person against whom the order was made, if the court finds that

(a) the circumstances that led to the making of the agreement or order have changed and, in the circumstances that exist at the time the application is made, the agreement or order would not have been made or would have been ineffective in achieving its intended purpose; or

(b) the Commissioner and the person who consented to the agreement have consented to an alternative agreement or the Commissioner and the person against whom the order was made have consented to an alternative order.

1999, c. 2, s. 22; 2002, c. 16, s. 11.

Evidence

74.14 In determining whether or not to make an order under this Part, the court shall not exclude from consideration any evidence by reason only that it might be evidence in respect of an offence under this Act or in respect of which another order could be made by the court under this Act.

1999, c. 2, s. 22.

Unpaid monetary penalty

74.15 The amount of an administrative monetary penalty imposed on a person under paragraph 74.1(1)(c) is a debt due to Her Majesty in right of Canada and may be recovered as such from that person in a court of competent jurisdiction.

1999, c. 2, s. 22.

Proceedings commenced under Part VI

74.16 No application may be made by the Commissioner for an order under this Part against a person where proceedings have been commenced under section 52 against that person on the basis of the same or substantially the same facts as would be alleged in proceedings under this Part.

1999, c. 2, s. 22.

RULES OF PROCEDURE

Power of courts

74.17 The rules committee of the Federal Court, or a superior court of a province, may make rules respecting the procedure for the disposition of applications by that court under this Part.

1999, c. 2, s. 22.

APPEALS

Appeal to Federal Court of Appeal

74.18 (1) An appeal may be brought in the Federal Court of Appeal from any decision or order made under this Part, or from a refusal to make an order, by the Tribunal or the Federal Court.

Appeal to provincial court of appeal

(2) An appeal may be brought in the court of appeal of a province from any decision or order made under this Part, or from a refusal to make an order, by a superior court of the province.

Disposition of appeal

(3) Where the Federal Court of Appeal or the court of appeal of the province allows an appeal under this section, it may quash the decision or order appealed from, refer the matter back to the court appealed from or make any decision or order that, in its opinion, that court should have made.

1999, c. 2, s. 22; 2002, c. 8, s. 183.

Appeal on question of fact

74.19 An appeal on a question of fact from a decision or order made under this Part may be brought only with the leave of the Federal Court of Appeal or the court of appeal of the province, as the case may be.

1999, c. 2, s. 22.

PART VIII

MATTERS REVIEWABLE BY TRIBUNAL

RESTRICTIVE TRADE PRACTICES

Refusal to Deal

Jurisdiction of Tribunal where refusal to deal

75. (1) Where, on application by the Commissioner or a person granted leave under section 103.1, the Tribunal finds that

(a) a person is substantially affected in his business or is precluded from carrying on business due to his inability to obtain adequate supplies of a product anywhere in a market on usual trade terms,

(b) the person referred to in paragraph (a) is unable to obtain adequate supplies of the product because of insufficient competition among suppliers of the product in the market,

(c) the person referred to in paragraph (a) is willing and able to meet the usual trade terms of the supplier or suppliers of the product,

(d) the product is in ample supply, and

(e) the refusal to deal is having or is likely to have an adverse effect on competition in a market,

the Tribunal may order that one or more suppliers of the product in the market accept the person as a customer within a specified time on usual trade terms unless, within the specified time, in the case of an article, any customs duties on the article are removed, reduced or remitted and the effect of the removal, reduction or remission is to place the person on an equal footing with other persons who are able to obtain adequate supplies of the article in Canada.

When article is a separate product

(2) For the purposes of this section, an article is not a separate product in a market only because it is differentiated from other articles in its class by a trade-mark, proprietary name or the like, unless the article so differentiated occupies such a dominant position in that market as to substantially affect the ability of a person to carry on business in that class of articles unless that person has access to the article so differentiated.

Definition of "trade terms"

(3) For the purposes of this section, the expression "trade terms" means terms in respect of payment, units of purchase and reasonable technical and servicing requirements.

Inferences

(4) In considering an application by a person granted leave under section 103.1, the Tribunal may not draw any inference from the fact that the Commissioner has or has not taken any action in respect of the matter raised by the application.

R.S., 1985, c. C-34, s. 75; R.S., 1985, c. 19 (2nd Supp.), s. 45; 1999, c. 2, s. 37; 2002, c. 16, s. 11.1.

Price Maintenance

Price maintenance

76. (1) On application by the Commissioner or a person granted leave under section 103.1, the Tribunal may make an order under subsection (2) if the Tribunal finds that

(a) a person referred to in subsection (3) directly or indirectly

(i) by agreement, threat, promise or any like means, has influenced upward, or has discouraged the reduction of, the price at which the person's customer or any other person to whom the product comes for resale supplies or offers to supply or advertises a product within Canada, or

(ii) has refused to supply a product to or has otherwise discriminated against any person or class of persons engaged in business in Canada because of the low pricing policy of that other person or class of persons; and

(b) the conduct has had, is having or is likely to have an adverse effect on competition in a market.

Order

(2) The Tribunal may make an order prohibiting the person referred to in subsection (3) from continuing to engage in the conduct referred to in paragraph (1)(a) or requiring them to accept another person as a customer within a specified time on usual trade terms.

Persons subject to order

(3) An order may be made under subsection (2) against a person who

(a) is engaged in the business of producing or supplying a product;

(b) extends credit by way of credit cards or is otherwise engaged in a business that relates to credit cards; or

(c) has the exclusive rights and privileges conferred by a patent, trade-mark, copyright, registered industrial design or registered integrated circuit topography.

Where no order may be made

(4) No order may be made under subsection (2) if the person referred to in subsection (3) and the customer or other person referred to in subparagraph (1)(a)(i) or (ii) are principal and agent or mandator and mandatary, or are affiliated corporations or directors, agents, mandataries, officers or employees of

(a) the same corporation, partnership or sole proprietorship; or

(b) corporations, partnerships or sole proprietorships that are affiliated.

Suggested retail price

(5) For the purposes of this section, a suggestion by a producer or supplier of a product of a resale price or minimum resale price for the product, however arrived at, is proof that the person to whom the suggestion is made is influenced in accordance with the suggestion, in the absence of proof that the producer or supplier, in so doing, also made it clear to the person that they were under no obligation to accept the suggestion and would in no way suffer in their business relations with the producer or supplier or with any other person if they failed to accept the suggestion.

Advertised price

(6) For the purposes of this section, the publication by a producer or supplier of a product, other than a retailer, of an advertisement that mentions a resale price for the product is proof that the producer or supplier is influencing upward the selling price of any person to whom the product comes for resale, unless the price is expressed in a way that makes it clear to any person whose attention the advertisement comes to that the product may be sold at a lower price.

Exception

(7) Subsections (5) and (6) do not apply to a price that is affixed or applied to a product or its package or container.

Refusal to supply

(8) If, on application by the Commissioner or a person granted leave under section 103.1, the Tribunal finds that any person, by agreement, threat, promise or any like means, has induced a supplier, whether within or outside Canada, as a condition of doing business with the supplier, to refuse to supply a product to a particular person or class of persons because of the low pricing policy of that person or class of persons, and that the conduct of inducement has had, is having or is likely to have an adverse effect on competition in a market, the Tribunal may make an order prohibiting the person from continuing to engage in the conduct or requiring the person to do business with the supplier on usual trade terms.

Where no order may be made

(9) No order may be made under subsection (2) in respect of conduct referred to in subparagraph (1)(a)(ii) if the Tribunal is satisfied that the person or class of persons referred to in that subparagraph, in respect of products supplied by the person referred to in subsection (3),

(a) was making a practice of using the products as loss leaders, that is to say, not for the purpose of making a profit on those products but for purposes of advertising;

(b) was making a practice of using the products not for the purpose of selling them at a profit but for the purpose of attracting customers in the hope of selling them other products;

(c) was making a practice of engaging in misleading advertising; or

(d) made a practice of not providing the level of servicing that purchasers of the products might reasonably expect.

Inferences

(10) In considering an application by a person granted leave under section 103.1, the Tribunal may not draw any inference from the fact that the Commissioner has or has not taken any action in respect of the matter raised by the application.

Where proceedings commenced under section 45, 49, 79 or 90.1

(11) No application may be made under this section against a person on the basis of facts that are the same or substantially the same as the facts on the basis of which

(a) proceedings have been commenced against that person under section 45 or 49; or

(b) an order against that person is sought under section 79 or 90.1.

Definition of "trade terms"

(12) For the purposes of this section, "trade terms" means terms in respect of payment, units of purchase and reasonable technical and servicing requirements.

R.S., 1985, c. C-34, s. 76; R.S., 1985, c. 19 (2nd Supp.), s. 45; 1999, c. 2, s. 37; 2009, c. 2, s. 426.

Exclusive Dealing, Tied Selling and Market Restriction

Definitions

77. (1) For the purposes of this section,

"exclusive dealing"

« **exclusivité** »

"exclusive dealing" means

(a) any practice whereby a supplier of a product, as a condition of supplying the product to a customer, requires that customer to

(i) deal only or primarily in products supplied by or designated by the supplier or the supplier's nominee, or

(ii) refrain from dealing in a specified class or kind of product except as supplied by the supplier or the nominee, and

(b) any practice whereby a supplier of a product induces a customer to meet a condition set out in subparagraph (a)(i) or (ii) by offering to supply the product to

the customer on more favourable terms or conditions if the customer agrees to meet the condition set out in either of those subparagraphs;

“market restriction”

« **limitation du marché** »

“market restriction” means any practice whereby a supplier of a product, as a condition of supplying the product to a customer, requires that customer to supply any product only in a defined market, or exacts a penalty of any kind from the customer if he supplies any product outside a defined market;

“tied selling”

« **ventes liées** »

“tied selling” means

(a) any practice whereby a supplier of a product, as a condition of supplying the product (the “tying” product) to a customer, requires that customer to

(i) acquire any other product from the supplier or the supplier’s nominee, or

(ii) refrain from using or distributing, in conjunction with the tying product, another product that is not of a brand or manufacture designated by the supplier or the nominee, and

(b) any practice whereby a supplier of a product induces a customer to meet a condition set out in subparagraph (a)(i) or (ii) by offering to supply the tying product to the customer on more favourable terms or conditions if the customer agrees to meet the condition set out in either of those subparagraphs.

Exclusive dealing and tied selling

(2) Where, on application by the Commissioner or a person granted leave under section 103.1, the Tribunal finds that exclusive dealing or tied selling, because it is engaged in by a major supplier of a product in a market or because it is widespread in a market, is likely to

(a) impede entry into or expansion of a firm in a market,

(b) impede introduction of a product into or expansion of sales of a product in a market, or

(c) have any other exclusionary effect in a market,

with the result that competition is or is likely to be lessened substantially, the Tribunal may make an order directed to all or any of the suppliers against whom an order is sought prohibiting them from continuing to engage in that exclusive dealing or tied selling and containing any other requirement that, in its opinion, is necessary to overcome the effects thereof in the market or to restore or stimulate competition in the market.

Market restriction

(3) Where, on application by the Commissioner or a person granted leave under section 103.1, the Tribunal finds that market restriction, because it is engaged in by a major supplier of a product or because it is widespread in relation to a product, is likely to substantially lessen competition in relation to the product, the Tribunal may make an order directed to all or any of the suppliers against whom an order is sought prohibiting them from continuing to engage in market restriction and containing any other requirement that, in its opinion, is necessary to restore or stimulate competition in relation to the product.

Damage awards

(3.1) For greater certainty, the Tribunal may not make an award of damages under this section to a person granted leave under subsection 103.1(7).

Where no order to be made and limitation on application of order

(4) The Tribunal shall not make an order under this section where, in its opinion,
(a) exclusive dealing or market restriction is or will be engaged in only for a reasonable period of time to facilitate entry of a new supplier of a product into a market or of a new product into a market,
(b) tied selling that is engaged in is reasonable having regard to the technological relationship between or among the products to which it applies, or
(c) tied selling that is engaged in by a person in the business of lending money is for the purpose of better securing loans made by that person and is reasonably necessary for that purpose,
and no order made under this section applies in respect of exclusive dealing, market restriction or tied selling between or among companies, partnerships and sole proprietorships that are affiliated.

Where company, partnership or sole proprietorship affiliated

(5) For the purposes of subsection (4),
(a) one company is affiliated with another company if one of them is the subsidiary of the other or both are the subsidiaries of the same company or each of them is controlled by the same person;
(b) if two companies are affiliated with the same company at the same time, they are deemed to be affiliated with each other;
(c) a partnership or sole proprietorship is affiliated with another partnership, sole proprietorship or a company if both are controlled by the same person; and
(d) a company, partnership or sole proprietorship is affiliated with another company, partnership or sole proprietorship in respect of any agreement between them whereby one party grants to the other party the right to use a trade-mark or trade-name to identify the business of the grantee, if
(i) the business is related to the sale or distribution, pursuant to a marketing plan or system prescribed substantially by the grantor, of a multiplicity of products obtained from competing sources of supply and a multiplicity of suppliers, and
(ii) no one product dominates the business.

When persons deemed to be affiliated

(6) For the purposes of subsection (4) in its application to market restriction, where there is an agreement whereby one person (the "first" person) supplies or causes to be supplied to another person (the "second" person) an ingredient or ingredients that the second person processes by the addition of labour and material into an article of food or drink that he then sells in association with a trade-mark that the first person owns or in respect of which the first person is a registered user, the first person and the second person are deemed, in respect of the agreement, to be affiliated.

Inferences

(7) In considering an application by a person granted leave under section 103.1, the Tribunal may not draw any inference from the fact that the Commissioner has or has not taken any action in respect of the matter raised by the application.

R.S., 1985, c. C-34, s. 77; R.S., 1985, c. 19 (2nd Supp.), s. 45; 1999, c. 2, ss. 23, 37, c. 31, s. 52(F); 2002, c. 16, ss. 11.2, 11.3.

Abuse of Dominant Position

Definition of "anti-competitive act"

78. (1) For the purposes of section 79, "anti-competitive act", without restricting the generality of the term, includes any of the following acts:

(a) squeezing, by a vertically integrated supplier, of the margin available to an unintegrated customer who competes with the supplier, for the purpose of impeding or preventing the customer's entry into, or expansion in, a market;

(b) acquisition by a supplier of a customer who would otherwise be available to a competitor of the supplier, or acquisition by a customer of a supplier who would otherwise be available to a competitor of the customer, for the purpose of impeding or preventing the competitor's entry into, or eliminating the competitor from, a market;

(c) freight equalization on the plant of a competitor for the purpose of impeding or preventing the competitor's entry into, or eliminating the competitor from, a market;

(d) use of fighting brands introduced selectively on a temporary basis to discipline or eliminate a competitor;

(e) pre-emption of scarce facilities or resources required by a competitor for the operation of a business, with the object of withholding the facilities or resources from a market;

(f) buying up of products to prevent the erosion of existing price levels;

(g) adoption of product specifications that are incompatible with products produced by any other person and are designed to prevent his entry into, or to eliminate him from, a market;

(h) requiring or inducing a supplier to sell only or primarily to certain customers, or to refrain from selling to a competitor, with the object of preventing a competitor's entry into, or expansion in, a market; and

(i) selling articles at a price lower than the acquisition cost for the purpose of disciplining or eliminating a competitor.

(j) and (k) [Repealed, 2009, c. 2, s. 427]

(2) [Repealed, 2009, c. 2, s. 427]

R.S., 1985, c. 19 (2nd Supp.), s. 45; 2000, c. 15, s. 13; 2009, c. 2, s. 427.

Prohibition where abuse of dominant position

79. (1) Where, on application by the Commissioner, the Tribunal finds that

(a) one or more persons substantially or completely control, throughout Canada or any area thereof, a class or species of business,

(b) that person or those persons have engaged in or are engaging in a practice of anti-competitive acts, and

(c) the practice has had, is having or is likely to have the effect of preventing or lessening competition substantially in a market,

the Tribunal may make an order prohibiting all or any of those persons from engaging in that practice.

Additional or alternative order

(2) Where, on an application under subsection (1), the Tribunal finds that a practice of anti-competitive acts has had or is having the effect of preventing or lessening competition substantially in a market and that an order under subsection (1) is not likely to restore competition in that market, the Tribunal may, in addition to or in lieu of making an order under subsection (1), make an order directing any or all the persons against whom an order is sought to take such actions, including the divestiture of assets or shares, as are reasonable and as are necessary to overcome the effects of the practice in that market.

Limitation

(3) In making an order under subsection (2), the Tribunal shall make the order in such terms as will in its opinion interfere with the rights of any person to whom the order is directed or any other person affected by it only to the extent necessary to achieve the purpose of the order.

Administrative monetary penalty

(3.1) If the Tribunal makes an order against a person under subsection (1) or (2), it may also order them to pay, in any manner that the Tribunal specifies, an administrative monetary penalty in an amount not exceeding \$10,000,000 and, for each subsequent order under either of those subsections, an amount not exceeding \$15,000,000.

Aggravating or mitigating factors

(3.2) In determining the amount of an administrative monetary penalty, the Tribunal shall take into account any evidence of the following:

- (a) the effect on competition in the relevant market;
- (b) the gross revenue from sales affected by the practice;
- (c) any actual or anticipated profits affected by the practice;
- (d) the financial position of the person against whom the order is made;
- (e) the history of compliance with this Act by the person against whom the order is made; and
- (f) any other relevant factor.

Purpose of order

(3.3) The purpose of an order made against a person under subsection (3.1) is to promote practices by that person that are in conformity with the purposes of this section and not to punish that person.

Superior competitive performance

(4) In determining, for the purposes of subsection (1), whether a practice has had, is having or is likely to have the effect of preventing or lessening competition substantially in a market, the Tribunal shall consider whether the practice is a result of superior competitive performance.

Exception

(5) For the purpose of this section, an act engaged in pursuant only to the exercise of any right or enjoyment of any interest derived under the *Copyright Act, Industrial Design Act, Integrated Circuit Topography Act, Patent Act, Trade-marks Act* or any other Act of Parliament pertaining to intellectual or industrial property is not an anti-competitive act.

Limitation period

(6) No application may be made under this section in respect of a practice of anti-competitive acts more than three years after the practice has ceased.

Where proceedings commenced under section 45, 49, 76, 90.1 or 92

(7) No application may be made under this section against a person on the basis of facts that are the same or substantially the same as the facts on the basis of which

- (a) proceedings have been commenced against that person under section 45 or 49;
- or
- (b) an order against that person is sought by the Commissioner under section 76, 90.1 or 92.

R.S., 1985, c. 19 (2nd Supp.), s. 45; 1990, c. 37, s. 31; 1999, c. 2, s. 37; 2002, c. 16, s. 11.4; 2009, c. 2, s. 428.

Unpaid monetary penalty

79.1 The amount of an administrative monetary penalty imposed on an entity under subsection 79(3.1) is a debt due to Her Majesty in right of Canada and may be recovered as such from that entity in a court of competent jurisdiction.

2002, c. 16, s. 11.5.

Delivered Pricing

Definition of "delivered pricing"

80. (1) For the purposes of section 81, "delivered pricing" means the practice of refusing a customer, or a person seeking to become a customer, delivery of an article at any place in which the supplier engages in a practice of making delivery of the article to any other of the supplier's customers on the same trade terms that would be available to the first-mentioned customer if his place of business were located in that place.

Definition of "trade terms"

(2) For the purposes of subsection (1), the expression "trade terms" means terms in respect of payment, units of purchase and reasonable technical and servicing requirements.

R.S., 1985, c. 19 (2nd Supp.), s. 45.

Delivered pricing

81. (1) Where, on application by the Commissioner, the Tribunal finds that delivered pricing is engaged in by a major supplier of an article in a market or is widespread in a market with the result that a customer, or a person seeking to become a customer, is denied an advantage that would otherwise be available to him

in the market, the Tribunal may make an order prohibiting all or any of such suppliers from engaging in delivered pricing.

Exception where significant capital investment needed

(2) No order shall be made against a supplier under this section where the Tribunal finds that the supplier could not accommodate any additional customers at a locality without making significant capital investment at that locality.

Exception where trade-mark used

(3) No order shall be made against a supplier under this section in respect of a practice of refusing a customer delivery of an article that the customer sells in association with a trade-mark that the supplier owns or in respect of which the supplier is a registered user where the Tribunal finds that the practice is necessary to maintain a standard of quality in respect of the article.

R.S., 1985, c. 19 (2nd Supp.), s. 45; 1999, c. 2, s. 37.

Foreign Judgments and Laws

Foreign judgments, etc.

82. Where, on application by the Commissioner, the Tribunal finds that

- (a) a judgment, decree, order or other process given, made or issued by or out of a court or other body in a country other than Canada can be implemented in whole or in part by persons in Canada, by companies incorporated by or pursuant to an Act of Parliament or of the legislature of a province, or by measures taken in Canada, and
- (b) the implementation in whole or in part of the judgment, decree, order or other process in Canada, would
 - (i) adversely affect competition in Canada,
 - (ii) adversely affect the efficiency of trade or industry in Canada without bringing about or increasing in Canada competition that would restore or improve that efficiency,
 - (iii) adversely affect the foreign trade of Canada without compensating advantages, or
 - (iv) otherwise restrain or injure trade or commerce in Canada without compensating advantages,

the Tribunal may, by order, direct that

- (c) no measures be taken in Canada to implement the judgment, decree, order or process, or
- (d) no measures be taken in Canada to implement the judgment, decree, order or process except in such manner as the Tribunal prescribes for the purpose of avoiding an effect referred to in subparagraphs (b)(i) to (iv).

R.S., 1985, c. 19 (2nd Supp.), s. 45; 1999, c. 2, s. 37.

Foreign laws and directives

83. (1) Where, on application by the Commissioner, the Tribunal finds that a decision has been or is about to be made by a person in Canada or a company incorporated by or pursuant to an Act of Parliament or of the legislature of a province

- (a) as a result of

- (i) a law in force in a country other than Canada, or
- (ii) a directive, instruction, intimation of policy or other communication to that person or company or to any other person from

(A) the government of a country other than Canada or of any political subdivision thereof that is in a position to direct or influence the policies of that person or company, or

(B) a person in a country other than Canada who is in a position to direct or influence the policies of that person or company,

where the communication is for the purpose of giving effect to a law in force in a country other than Canada,

and that the decision, if implemented, would have or would be likely to have any of the effects mentioned in subparagraphs 82(b)(i) to (iv), or

(b) as a result of a directive, instruction, intimation of policy or other communication to that person or company or to any other person, from a person in a country other than Canada who is in a position to direct or influence the policies of that person or company, where the communication is for the purpose of giving effect to a conspiracy, combination, agreement or arrangement entered into outside Canada that, if entered into in Canada, would have been in contravention of section 45, the Tribunal may, by order, direct that

(c) in a case described in paragraph (a) or (b), no measures be taken by the person or company in Canada to implement the law, directive, instruction, intimation of policy or other communication, or

(d) in a case described in paragraph (a), no measures be taken by the person or company in Canada to implement the law, directive, instruction, intimation of policy or other communication except in such manner as the Tribunal prescribes for the purpose of avoiding an effect referred to in subparagraphs 82(b)(i) to (iv).

Limitation

(2) No application may be made by the Commissioner for an order under this section against a particular company where proceedings have been commenced under section 46 against that company based on the same or substantially the same facts as would be alleged in the application.

R.S., 1985, c. 19 (2nd Supp.), s. 45; 1999, c. 2, s. 37.

Foreign Suppliers

Refusal to supply by foreign supplier

84. Where, on application by the Commissioner, the Tribunal finds that a supplier outside Canada has refused to supply a product or otherwise discriminated in the supply of a product to a person in Canada (the "first" person) at the instance of and by reason of the exertion of buying power outside Canada by another person, the Tribunal may order any person in Canada (the "second" person) by whom or on whose behalf or for whose benefit the buying power was exerted

(a) to sell any such product of the supplier that the second person has obtained or obtains to the first person at the laid-down cost in Canada to the second person of

the product and on the same terms and conditions as the second person obtained or obtains from the supplier; or

(b) not to deal or to cease to deal, in Canada, in that product of the supplier.

R.S., 1985, c. 19 (2nd Supp.), s. 45; 1999, c. 2, s. 37.

SPECIALIZATION AGREEMENTS

Definitions

85. For the purposes of this section and sections 86 to 90,

"article"

« **article** »

"article" includes each separate type, size, weight and quality in which an article, within the meaning assigned by section 2, is produced;

"registered"

« **inscrit** »

"registered" means registered in the register maintained pursuant to section 89;

"specialization agreement"

« **accord de spécialisation** »

"specialization agreement" means an agreement under which each party thereto agrees to discontinue producing an article or service that he is engaged in producing at the time the agreement is entered into on the condition that each other party to the agreement agrees to discontinue producing an article or service that he is engaged in producing at the time the agreement is entered into, and includes any such agreement under which the parties also agree to buy exclusively from each other the articles or services that are the subject of the agreement.

R.S., 1985, c. 19 (2nd Supp.), s. 45.

Order directing registration

86. (1) Where, on application by any person, and after affording the Commissioner a reasonable opportunity to be heard, the Tribunal finds that an agreement that the person who has made the application has entered into or is about to enter into is a specialization agreement and that

(a) the implementation of the agreement is likely to bring about gains in efficiency that will be greater than, and will offset, the effects of any prevention or lessening of competition that will result or is likely to result from the agreement and the gains in efficiency would not likely be attained if the agreement were not implemented, and

(b) no attempt has been made by the persons who have entered or are about to enter into the agreement to coerce any person to become a party to the agreement, the Tribunal may, subject to subsection (4), make an order directing that the agreement be registered for a period specified in the order.

Factors to be considered

(2) In considering whether an agreement is likely to bring about gains in efficiency described in paragraph (1)(a), the Tribunal shall consider whether those gains will result in

(a) a significant increase in the real value of exports; or

(b) a significant substitution of domestic articles or services for imported articles or services.

Redistribution of income does not result in gains in efficiency

(3) For the purposes of paragraph (1)(a), the Tribunal shall not find that an agreement is likely to bring about gains in efficiency by reason only of a redistribution of income between two or more persons.

Conditional orders

(4) Where, on an application under subsection (1), the Tribunal finds that an agreement meets the conditions prescribed by paragraphs (a) and (b) of that subsection but also finds that, as a result of the implementation of the agreement, there is not likely to be substantial competition remaining in the market or markets to which the agreement relates, the Tribunal may provide, in an order made under subsection (1), that the order shall take effect only if, within a reasonable period of time specified in the order, there has occurred any of the following events, specified in the order:

- (a) the divestiture of particular assets, specified in the order;
- (b) a wider licensing of patents or registered integrated circuit topographies;
- (c) a reduction in tariffs;
- (d) the making of an order in council under section 23 of the *Financial Administration Act* effecting a remission or remissions specified in the order of the Tribunal of any customs duties on an article that is a subject of the agreement; or
- (e) the removal of import quotas or import licensing requirements.

R.S., 1985, c. 19 (2nd Supp.), s. 45; 1990, c. 37, s. 32; 1999, c. 2, s. 37.

Registration of modifications

87. (1) On application by the parties to a specialization agreement that has been registered, and after affording the Commissioner a reasonable opportunity to be heard, the Tribunal may make an order directing that a modification of the agreement be registered.

Order to remove from register

(2) Where, on application by the Commissioner, the Tribunal finds that the agreement or a modification thereof that has been registered (a) has ceased to meet the conditions prescribed by paragraph 86(1)(a) or (b), or (b) is not being implemented, the Tribunal may make an order directing that the agreement or modification thereof, and any order relating thereto, be removed from the register.

R.S., 1985, c. 19 (2nd Supp.), s. 45; 1999, c. 2, s. 37.

Right of intervention

88. The attorney general of a province may intervene in any proceedings before the Tribunal under section 86 or 87 for the purpose of making representations on behalf of the province.

R.S., 1985, c. 19 (2nd Supp.), s. 45.

Register of specialization agreements

89. (1) The Tribunal shall cause to be maintained at its Registry established pursuant to subsection 14(1) of the *Competition Tribunal Act* a register of

specialization agreements, and modifications thereof, that the Tribunal has directed be registered, and any such agreements and modifications thereof shall be included in the register for the periods specified in the orders.

Public access to register

(2) The register shall be kept open to inspection by any person during normal business hours of the Tribunal.

R.S., 1985, c. 19 (2nd Supp.), s. 45.

Non-application of sections 45, 77 and 90.1

90. Section 45, section 77 as it applies to exclusive dealing, and section 90.1 do not apply in respect of a specialization agreement, or any modification of such an agreement, that is registered.

R.S., 1985, c. 19 (2nd Supp.), s. 45; 2009, c. 2, s. 429.

AGREEMENTS OR ARRANGEMENTS THAT PREVENT OR LESSEN COMPETITION SUBSTANTIALLY

Order

90.1 (1) If, on application by the Commissioner, the Tribunal finds that an agreement or arrangement — whether existing or proposed — between persons two or more of whom are competitors prevents or lessens, or is likely to prevent or lessen, competition substantially in a market, the Tribunal may make an order (a) prohibiting any person — whether or not a party to the agreement or arrangement — from doing anything under the agreement or arrangement; or (b) requiring any person — whether or not a party to the agreement or arrangement — with the consent of that person and the Commissioner, to take any other action.

Factors to be considered

(2) In deciding whether to make the finding referred to in subsection (1), the Tribunal may have regard to the following factors:

- (a) the extent to which foreign products or foreign competitors provide or are likely to provide effective competition to the businesses of the parties to the agreement or arrangement;
- (b) the extent to which acceptable substitutes for products supplied by the parties to the agreement or arrangement are or are likely to be available;
- (c) any barriers to entry into the market, including
 - (i) tariff and non-tariff barriers to international trade,
 - (ii) interprovincial barriers to trade, and
 - (iii) regulatory control over entry;
- (d) any effect of the agreement or arrangement on the barriers referred to in paragraph (c);
- (e) the extent to which effective competition remains or would remain in the market;
- (f) any removal of a vigorous and effective competitor that resulted from the agreement or arrangement, or any likelihood that the agreement or arrangement will or would result in the removal of such a competitor;
- (g) the nature and extent of change and innovation in any relevant market; and
- (h) any other factor that is relevant to competition in the market that is or would be affected by the agreement or arrangement.

Evidence

(3) For the purpose of subsections (1) and (2), the Tribunal shall not make the finding solely on the basis of evidence of concentration or market share.

Exception where gains in efficiency

(4) The Tribunal shall not make an order under subsection (1) if it finds that the agreement or arrangement has brought about or is likely to bring about gains in efficiency that will be greater than, and will offset, the effects of any prevention or lessening of competition that will result or is likely to result from the agreement or arrangement, and that the gains in efficiency would not have been attained if the order had been made or would not likely be attained if the order were made.

Restriction

(5) For the purposes of subsection (4), the Tribunal shall not find that the agreement or arrangement has brought about or is likely to bring about gains in efficiency by reason only of a redistribution of income between two or more persons.

Factors to be considered

(6) In deciding whether the agreement or arrangement is likely to bring about the gains in efficiency described in subsection (4), the Tribunal shall consider whether such gains will result in

- (a) a significant increase in the real value of exports; or
- (b) a significant substitution of domestic products for imported products.

Exception

(7) Subsection (1) does not apply if the agreement or arrangement is entered into, or would be entered into, only by companies each of which is, in respect of every one of the others, an affiliate.

Exception

(8) Subsection (1) does not apply if the agreement or arrangement relates only to the export of products from Canada, unless the agreement or arrangement

- (a) has resulted in or is likely to result in a reduction or limitation of the real value of exports of a product;
- (b) has restricted or is likely to restrict any person from entering into or expanding the business of exporting products from Canada; or
- (c) has prevented or lessened or is likely to prevent or lessen competition substantially in the supply of services that facilitate the export of products from Canada.

Exception

(9) The Tribunal shall not make an order under subsection (1) in respect of

(a) an agreement or arrangement between federal financial institutions, as defined in subsection 49(3), in respect of which the Minister of Finance has certified to the Commissioner

(i) the names of the parties to the agreement or arrangement, and
(ii) the Minister of Finance's request for or approval of the agreement or arrangement for the purposes of financial policy;

(b) an agreement or arrangement that constitutes a merger or proposed merger under the *Bank Act*, the *Cooperative Credit Associations Act*, the *Insurance Companies Act* or the *Trust and Loan Companies Act* in respect of which the Minister of Finance has certified to the Commissioner

(i) the names of the parties to the agreement or arrangement, and
(ii) the Minister of Finance's opinion that the merger is in the public interest, or that it would be in the public interest, taking into account any terms and conditions that may be imposed under those Acts; or

(c) an agreement or arrangement that constitutes a merger or proposed merger approved under subsection 53.2(7) of the *Canada Transportation Act* in respect of which the Minister of Transport has certified to the Commissioner the names of the parties to the agreement or arrangement.

Where proceedings commenced under section 45, 49, 76, 79 or 92

(10) No application may be made under this section against a person on the basis of facts that are the same or substantially the same as the facts on the basis of which

(a) proceedings have been commenced against that person under section 45 or 49;
or

(b) an order against that person is sought by the Commissioner under section 76, 79 or 92.

Definition of "competitor"

(11) In subsection (1), "competitor" includes a person who it is reasonable to believe would be likely to compete with respect to a product in the absence of the agreement or arrangement.

2009, c. 2, s. 429.

MERGERS

Definition of "merger"

91. In sections 92 to 100, "merger" means the acquisition or establishment, direct or indirect, by one or more persons, whether by purchase or lease of shares or assets, by amalgamation or by combination or otherwise, of control over or significant interest in the whole or a part of a business of a competitor, supplier, customer or other person.

R.S., 1985, c. 19 (2nd Supp.), s. 45.

Order

92. (1) Where, on application by the Commissioner, the Tribunal finds that a merger or proposed merger prevents or lessens, or is likely to prevent or lessen, competition substantially

(a) in a trade, industry or profession,

(b) among the sources from which a trade, industry or profession obtains a product,

- (c) among the outlets through which a trade, industry or profession disposes of a product, or
- (d) otherwise than as described in paragraphs (a) to (c), the Tribunal may, subject to sections 94 to 96,
- (e) in the case of a completed merger, order any party to the merger or any other person
 - (i) to dissolve the merger in such manner as the Tribunal directs,
 - (ii) to dispose of assets or shares designated by the Tribunal in such manner as the Tribunal directs, or
 - (iii) in addition to or in lieu of the action referred to in subparagraph (i) or (ii), with the consent of the person against whom the order is directed and the Commissioner, to take any other action, or
- (f) in the case of a proposed merger, make an order directed against any party to the proposed merger or any other person
 - (i) ordering the person against whom the order is directed not to proceed with the merger,
 - (ii) ordering the person against whom the order is directed not to proceed with a part of the merger, or
 - (iii) in addition to or in lieu of the order referred to in subparagraph (ii), either or both

(A) prohibiting the person against whom the order is directed, should the merger or part thereof be completed, from doing any act or thing the prohibition of which the Tribunal determines to be necessary to ensure that the merger or part thereof does not prevent or lessen competition substantially, or

(B) with the consent of the person against whom the order is directed and the Commissioner, ordering the person to take any other action.

Evidence

(2) For the purpose of this section, the Tribunal shall not find that a merger or proposed merger prevents or lessens, or is likely to prevent or lessen, competition substantially solely on the basis of evidence of concentration or market share.

R.S., 1985, c. 19 (2nd Supp.), s. 45; 1999, c. 2, s. 37.

Factors to be considered regarding prevention or lessening of competition

93. In determining, for the purpose of section 92, whether or not a merger or proposed merger prevents or lessens, or is likely to prevent or lessen, competition substantially, the Tribunal may have regard to the following factors:

- (a) the extent to which foreign products or foreign competitors provide or are likely to provide effective competition to the businesses of the parties to the merger or proposed merger;
- (b) whether the business, or a part of the business, of a party to the merger or proposed merger has failed or is likely to fail;
- (c) the extent to which acceptable substitutes for products supplied by the parties to the merger or proposed merger are or are likely to be available;
- (d) any barriers to entry into a market, including
 - (i) tariff and non-tariff barriers to international trade,
 - (ii) interprovincial barriers to trade, and
 - (iii) regulatory control over entry,

and any effect of the merger or proposed merger on such barriers;

- (e) the extent to which effective competition remains or would remain in a market that is or would be affected by the merger or proposed merger;
- (f) any likelihood that the merger or proposed merger will or would result in the removal of a vigorous and effective competitor;
- (g) the nature and extent of change and innovation in a relevant market; and
- (h) any other factor that is relevant to competition in a market that is or would be affected by the merger or proposed merger.

R.S., 1985, c. 19 (2nd Supp.), s. 45.

Exception

94. The Tribunal shall not make an order under section 92 in respect of

- (a) a merger substantially completed before the coming into force of this section;
- (b) a merger or proposed merger under the *Bank Act*, the *Cooperative Credit Associations Act*, the *Insurance Companies Act* or the *Trust and Loan Companies Act* in respect of which the Minister of Finance has certified to the Commissioner the names of the parties and that the merger is in the public interest — or that it would be in the public interest, taking into account any terms and conditions that may be imposed under those Acts; or
- (c) a merger or proposed merger approved under subsection 53.2(7) of the *Canada Transportation Act* and in respect of which the Minister of Transport has certified to the Commissioner the names of the parties.

R.S., 1985, c. 19 (2nd Supp.), s. 45; 1991, c. 45, s. 549, c. 46, ss. 592, 593, c. 47, s. 716; 1999, c. 2, s. 37; 2000, c. 15, s. 14; 2001, c. 9, s. 579; 2007, c. 19, s. 62.

Exception for joint ventures

95. (1) The Tribunal shall not make an order under section 92 in respect of a combination formed or proposed to be formed, otherwise than through a corporation, to undertake a specific project or a program of research and development if

- (a) a project or program of that nature
 - (i) would not have taken place or be likely to take place in the absence of the combination, or
 - (ii) would not reasonably have taken place or reasonably be likely to take place in the absence of the combination because of the risks involved in relation to the project or program and the business to which it relates;
- (b) no change in control over any party to the combination resulted or would result from the combination;
- (c) all the persons who formed the combination are parties to an agreement in writing that imposes on one or more of them an obligation to contribute assets and governs a continuing relationship between those parties;
- (d) the agreement referred to in paragraph (c) restricts the range of activities that may be carried on pursuant to the combination, and provides that the agreement terminates on the completion of the project or program; and
- (e) the combination does not prevent or lessen or is not likely to prevent or lessen competition except to the extent reasonably required to undertake and complete the project or program.

Limitation

(2) For greater certainty, this section does not apply in respect of the acquisition of assets of a combination.

R.S., 1985, c. 19 (2nd Supp.), s. 45.

Exception where gains in efficiency

96. (1) The Tribunal shall not make an order under section 92 if it finds that the merger or proposed merger in respect of which the application is made has brought about or is likely to bring about gains in efficiency that will be greater than, and will offset, the effects of any prevention or lessening of competition that will result or is likely to result from the merger or proposed merger and that the gains in efficiency would not likely be attained if the order were made.

Factors to be considered

(2) In considering whether a merger or proposed merger is likely to bring about gains in efficiency described in subsection (1), the Tribunal shall consider whether such gains will result in

- (a) a significant increase in the real value of exports; or
- (b) a significant substitution of domestic products for imported products.

Restriction

(3) For the purposes of this section, the Tribunal shall not find that a merger or proposed merger has brought about or is likely to bring about gains in efficiency by reason only of a redistribution of income between two or more persons.

R.S., 1985, c. 19 (2nd Supp.), s. 45.

Limitation period

97. No application may be made under section 92 in respect of a merger more than one year after the merger has been substantially completed.

R.S., 1985, c. 19 (2nd Supp.), s. 45; 2009, c. 2, s. 430.

Where proceedings commenced under section 45, 49, 79 or 90.1

98. No application may be made under section 92 against a person on the basis of facts that are the same or substantially the same as the facts on the basis of which

- (a) proceedings have been commenced against that person under section 45 or 49; or
- (b) an order against that person is sought under section 79 or 90.1.

R.S., 1985, c. 19 (2nd Supp.), s. 45; 2009, c. 2, s. 430.

Conditional orders directing dissolution of a merger

99. (1) The Tribunal may provide, in an order made under section 92 directing a person to dissolve a merger or to dispose of assets or shares, that the order may be rescinded or varied if, within a reasonable period of time specified in the order,

- (a) there has occurred
 - (i) a reduction, removal or remission, specified in the order, of any relevant customs duties, or
 - (ii) a reduction or removal, specified in the order, of prohibitions, controls or regulations imposed by or pursuant to any Act of Parliament on the importation into Canada of an article specified in the order, or
- (b) that person or any other person has taken any action specified in the order that will, in the opinion of the Tribunal, prevent the merger from preventing or lessening competition substantially.

When conditional order may be rescinded or varied

(2) Where, on application by any person against whom an order under section 92 is directed, the Tribunal is satisfied that

- (a) a reduction, removal or remission specified in the order pursuant to paragraph (1)(a) has occurred, or
 - (b) the action specified in the order pursuant to paragraph (1)(b) has been taken,
- the Tribunal may rescind or vary the order accordingly.

R.S., 1985, c. 19 (2nd Supp.), s. 45.

Interim order where no application under section 92

100. (1) The Tribunal may issue an interim order forbidding any person named in the application from doing any act or thing that it appears to the Tribunal may constitute or be directed toward the completion or implementation of a proposed merger in respect of which an application has not been made under section 92 or previously under this section, where

- (a) on application by the Commissioner, certifying that an inquiry is being made under paragraph 10(1)(b) and that, in the Commissioner's opinion, more time is required to complete the inquiry, the Tribunal finds that in the absence of an interim order a party to the proposed merger or any other person is likely to take an action that would substantially impair the ability of the Tribunal to remedy the effect of the proposed merger on competition under that section because that action would be difficult to reverse; or
- (b) the Tribunal finds, on application by the Commissioner, that there has been a contravention of section 114 in respect of the proposed merger.

Notice of application

(2) Subject to subsection (3), at least forty-eight hours notice of an application for an interim order under subsection (1) shall be given by or on behalf of the Commissioner to each person against whom the order is sought.

Ex parte application

(3) Where the Tribunal is satisfied, in respect of an application for an interim order under paragraph (1)(b), that

- (a) subsection (2) cannot reasonably be complied with, or
 - (b) the urgency of the situation is such that service of notice in accordance with subsection (2) would not be in the public interest,
- it may proceed with the application *ex parte*.

Terms of interim order

(4) An interim order issued under subsection (1)

- (a) shall be on such terms as the Tribunal considers necessary and sufficient to meet the circumstances of the case; and
- (b) subject to subsections (5) and (6), shall have effect for such period of time as is specified in it.

Duration of order: inquiry

(5) The duration of an interim order issued under paragraph (1)(a) shall not exceed thirty days.

Duration of order: failure to comply

(6) The duration of an interim order issued under paragraph (1)(b) shall not exceed (a) ten days after section 114 is complied with, in the case of an interim order issued on *ex parte* application; or (b) thirty days after section 114 is complied with, in any other case.

Extension of time

(7) Where the Tribunal finds, on application made by the Commissioner on forty-eight hours notice to each person to whom an interim order is directed, that the Commissioner is unable to complete an inquiry within the period specified in the order because of circumstances beyond the control of the Commissioner, the Tribunal may extend the duration of the order to a day not more than sixty days after the order takes effect.

Completion of inquiry

(8) Where an interim order is issued under paragraph (1)(a), the Commissioner shall proceed as expeditiously as possible to complete the inquiry under section 10 in respect of the proposed merger.

R.S., 1985, c. 19 (2nd Supp.), s. 45; 1999, c. 2, ss. 24, 37.

Right of intervention

101. The attorney general of a province may intervene in any proceedings before the Tribunal under section 92 for the purpose of making representations on behalf of the province.

R.S., 1985, c. 19 (2nd Supp.), s. 45.

Advance ruling certificates

102. (1) Where the Commissioner is satisfied by a party or parties to a proposed transaction that he would not have sufficient grounds on which to apply to the Tribunal under section 92, the Commissioner may issue a certificate to the effect that he is so satisfied.

Duty of Commissioner

(2) The Commissioner shall consider any request for a certificate under this section as expeditiously as possible.

R.S., 1985, c. 19 (2nd Supp.), s. 45; 1999, c. 2, s. 37.

No application under section 92

103. Where the Commissioner issues a certificate under section 102, the Commissioner shall not, if the transaction to which the certificate relates is substantially completed within one year after the certificate is issued, apply to the Tribunal under section 92 in respect of the transaction solely on the basis of

information that is the same or substantially the same as the information on the basis of which the certificate was issued.

R.S., 1985, c. 19 (2nd Supp.), s. 45; 1999, c. 2, s. 37.

GENERAL

Leave to make application under section 75, 76 or 77

103.1 (1) Any person may apply to the Tribunal for leave to make an application under section 75, 76 or 77. The application for leave must be accompanied by an affidavit setting out the facts in support of the person's application under that section.

Notice

(2) The applicant must serve a copy of the application for leave on the Commissioner and any person against whom the order under section 75, 76 or 77, as the case may be, is sought.

Certification by Commissioner

(3) The Commissioner shall, within 48 hours after receiving a copy of an application for leave, certify to the Tribunal whether or not the matter in respect of which leave is sought

(a) is the subject of an inquiry by the Commissioner; or

(b) was the subject of an inquiry that has been discontinued because of a settlement between the Commissioner and the person against whom the order under section 75, 76 or 77, as the case may be, is sought.

Application discontinued

(4) The Tribunal shall not consider an application for leave respecting a matter described in paragraph (3)(a) or (b) or a matter that is the subject of an application already submitted to the Tribunal by the Commissioner under section 75, 76 or 77.

Notice by Tribunal

(5) The Tribunal shall as soon as practicable after receiving the Commissioner's certification under subsection (3) notify the applicant and any person against whom the order is sought as to whether it can hear the application for leave.

Representations

(6) A person served with an application for leave may, within 15 days after receiving notice under subsection (5), make representations in writing to the Tribunal and shall serve a copy of the representations on any other person referred to in subsection (2).

Granting leave to make application under section 75 or 77

(7) The Tribunal may grant leave to make an application under section 75 or 77 if it has reason to believe that the applicant is directly and substantially affected in the

applicants' business by any practice referred to in one of those sections that could be subject to an order under that section.

Granting leave to make application under section 76

(7.1) The Tribunal may grant leave to make an application under section 76 if it has reason to believe that the applicant is directly affected by any conduct referred to in that section that could be subject to an order under that section.

Time and conditions for making application

(8) The Tribunal may set the time within which and the conditions subject to which an application under section 75, 76 or 77 must be made. The application must be made no more than one year after the practice or conduct that is the subject of the application has ceased.

Decision

(9) The Tribunal must give written reasons for its decision to grant or refuse leave and send copies to the applicant, the Commissioner and any other person referred to in subsection (2).

Limitation

(10) The Commissioner may not make an application for an order under section 75, 76, 77 or 79 on the basis of the same or substantially the same facts as are alleged in a matter for which the Tribunal has granted leave under subsection (7) or (7.1), if the person granted leave has already applied to the Tribunal under section 75, 76 or 77.

Inferences

(11) In considering an application for leave, the Tribunal may not draw any inference from the fact that the Commissioner has or has not taken any action in respect of the matter raised by it.

Inquiry by Commissioner

(12) If the Commissioner has certified under subsection (3) that a matter in respect of which leave was sought by a person is under inquiry and the Commissioner subsequently discontinues the inquiry other than by way of settlement, the Commissioner shall, as soon as practicable, notify that person that the inquiry is discontinued.

2002, c. 16, s. 12; 2009, c. 2, s. 431.

Intervention by Commissioner

103.2 If a person granted leave under subsection 103.1(7) or (7.1) makes an application under section 75, 76 or 77, the Commissioner may intervene in the proceedings.

2002, c. 16, s. 12; 2009, c. 2, s. 432.

Interim order

103.3 (1) Subject to subsection (2), the Tribunal may, on *ex parte* application by the Commissioner in which the Commissioner certifies that an inquiry is being made under paragraph 10(1)(b), issue an interim order

(a) to prevent the continuation of conduct that could be the subject of an order under any of sections 75 to 77, 79, 81 or 84; or

(b) to prevent the taking of measures under section 82 or 83.

Limitation

(2) The Tribunal may make the interim order if it finds that the conduct or measures could be of the type described in paragraph (1)(a) or (b) and that, in the absence of an interim order,

(a) injury to competition that cannot adequately be remedied by the Tribunal is likely to occur;

(b) a person is likely to be eliminated as a competitor; or

(c) a person is likely to suffer a significant loss of market share, a significant loss of revenue or other harm that cannot be adequately remedied by the Tribunal.

Consultation

(3) Before making an application for an order to prevent the continuation of conduct that could be the subject of an order under any of sections 75 to 77, 79, 81 or 84 by an entity incorporated under the *Bank Act*, the *Insurance Companies Act*, the *Trust and Loan Companies Act* or the *Cooperative Credit Associations Act* or a subsidiary of such an entity, the Commissioner must consult with the Minister of Finance respecting the safety and soundness of the entity.

Duration

(4) Subject to subsections (5) and (6), an interim order has effect for 10 days, beginning on the day on which it is made.

Extension or revocation of order

(5) The Tribunal may, on application by the Commissioner on 48 hours notice to each person against whom the interim order is directed,

(a) extend the interim order once or twice for additional periods of 35 days each; or

(b) rescind the order.

Application to Tribunal for extension

(5.1) The Commissioner may, before the expiry of the second 35-day period referred to in subsection (5) or of the period fixed by the Tribunal under subsection (7), as the case may be, apply to the Tribunal for a further extension of the interim order.

Notice of application by Commissioner

(5.2) The Commissioner shall give at least 48 hours notice of an application referred to in subsection (5.1) to the person against whom the interim order is made.

Extension of interim order

(5.3) The Tribunal may order that the effective period of the interim order be extended if

(a) the Commissioner establishes that information requested for the purpose of the inquiry has not yet been provided or that more time is needed in order to review the information;

(b) the information was requested during the initial period that the interim order had effect, within the first 35 days after an order extending the interim order under subsection (5) had effect, or within the first 35 days after an order extending the interim order made under subsection (7) had effect, as the case may be, and

(i) the provision of such information is the subject of a written undertaking, or

(ii) the information was ordered to be provided under section 11; and

(c) the information is reasonably required to determine whether grounds exist for the Commissioner to make an application under any section referred to in paragraph (1)(a) or (b).

Terms

(5.4) An order extending an interim order issued under subsection (5.3) shall have effect for such period as the Tribunal considers necessary to give the Commissioner a reasonable opportunity to receive and review the information referred to in that subsection.

Effect of application

(5.5) If an application is made under subsection (5.1), the interim order has effect until the Tribunal makes a decision whether to grant an extension under subsection (5.3).

When application made to Tribunal

(6) If an application is made under subsection (7), an interim order has effect until the Tribunal makes an order under that subsection.

Confirming or setting aside interim order

(7) A person against whom the Tribunal has made an interim order may apply to the Tribunal in the first 10 days during which the order has effect to have it varied or set aside and the Tribunal shall

(a) if it is satisfied that one or more of the situations set out in paragraphs (2)(a) to (c) existed or are likely to exist, make an order confirming the interim order, with or without variation as the Tribunal considers necessary and sufficient to meet the circumstances, and fix the effective period of that order for a maximum of 70 days, beginning on the day on which the order confirming the interim order is made; and

(b) if it is not satisfied that any of the situations set out in paragraphs (2)(a) to (c) existed or is likely to exist, make an order setting aside the interim order.

Notice

(8) A person who makes an application under subsection (7) shall give the Commissioner 48 hours written notice of the application.

Representations

(9) At the hearing of an application under subsection (7), the Tribunal shall provide the applicant, the Commissioner and any person directly affected by the interim order with a full opportunity to present evidence and make representations before the Tribunal makes an order under that subsection.

Prohibition of extraordinary relief

(10) Notwithstanding section 13 of the *Competition Tribunal Act*, an interim order shall not be appealed or reviewed in any court except as provided for by subsection (7).

Duty of Commissioner

(11) When an interim order is in effect, the Commissioner shall proceed as expeditiously as possible to complete the inquiry arising out of the conduct in respect of which the order was made.

2002, c. 16, s. 12.

Interim order

104. (1) Where an application has been made for an order under this Part, other than an interim order under section 100 or 103.3, the Tribunal, on application by the Commissioner or a person who has made an application under section 75 or 77, may issue such interim order as it considers appropriate, having regard to the principles ordinarily considered by superior courts when granting interlocutory or injunctive relief.

Terms of interim order

(2) An interim order issued under subsection (1) shall be on such terms, and shall have effect for such period of time, as the Tribunal considers necessary and sufficient to meet the circumstances of the case.

Duty of Commissioner

(3) Where an interim order issued under subsection (1) on application by the Commissioner is in effect, the Commissioner shall proceed as expeditiously as possible to complete proceedings under this Part arising out of the conduct in respect of which the order was issued.

R.S., 1985, c. 19 (2nd Supp.), s. 45; 1999, c. 2, s. 37; 2002, c. 16, s. 13.
104.1 [Repealed, 2009, c. 2, s. 433]

Consent agreement

105. (1) The Commissioner and a person in respect of whom the Commissioner has applied or may apply for an order under this Part, other than an interim order under section 103.3, may sign a consent agreement.

Terms of consent agreement

(2) The consent agreement shall be based on terms that could be the subject of an order of the Tribunal against that person.

Registration

(3) The consent agreement may be filed with the Tribunal for immediate registration.

Effect of registration

(4) Upon registration of the consent agreement, the proceedings, if any, are terminated, and the consent agreement has the same force and effect, and proceedings may be taken, as if it were an order of the Tribunal.

R.S., 1985, c. 19 (2nd Supp.), s. 45; 1999, c. 2, s. 37; 2002, c. 16, s. 14; 2009, c. 2, s. 434.

Rescission or variation of consent agreement or order

106. (1) The Tribunal may rescind or vary a consent agreement or an order made under this Part other than an order under section 103.3 or a consent agreement under section 106.1, on application by the Commissioner or the person who consented to the agreement, or the person against whom the order was made, if the Tribunal finds that

(a) the circumstances that led to the making of the agreement or order have changed and, in the circumstances that exist at the time the application is made, the agreement or order would not have been made or would have been ineffective in achieving its intended purpose; or

(b) the Commissioner and the person who consented to the agreement have consented to an alternative agreement or the Commissioner and the person against whom the order was made have consented to an alternative order.

Directly affected persons

(2) A person directly affected by a consent agreement, other than a party to that agreement, may apply to the Tribunal within 60 days after the registration of the agreement to have one or more of its terms rescinded or varied. The Tribunal may grant the application if it finds that the person has established that the terms could not be the subject of an order of the Tribunal.

R.S., 1985, c. 19 (2nd Supp.), s. 45; 1999, c. 2, s. 37; 2002, c. 16, s. 14; 2009, c. 2, s. 435.

Consent agreement — parties to a private action

106.1 (1) If a person granted leave under section 103.1 makes an application to the Tribunal for an order under section 75 or 77 and the terms of the order are agreed to by the person in respect of whom the order is sought and consistent with the provisions of this Act, a consent agreement may be filed with the Tribunal for registration.

Notice to Commissioner

(2) On filing the consent agreement with the Tribunal for registration, the parties shall serve a copy of it on the Commissioner without delay.

Publication

(3) The consent agreement shall be published without delay in the *Canada Gazette*.

Registration

(4) The consent agreement shall be registered 30 days after its publication unless a third party makes an application to the Tribunal before then to cancel the agreement or replace it with an order of the Tribunal.

Effect of registration

(5) Upon registration, the consent agreement has the same force and effect, and proceedings may be taken, as if it were an order of the Tribunal.

Commissioner may intervene

(6) On application by the Commissioner, the Tribunal may vary or rescind a registered consent agreement if it finds that the agreement has or is likely to have anti-competitive effects.

Notice

(7) The Commissioner must give notice of an application under subsection (6) to the parties to the consent agreement.

2002, c. 16, s. 14.

Evidence

107. In determining whether or not to make an order under this Part, the Tribunal shall not exclude from consideration any evidence by reason only that it might be evidence in respect of an offence under this Act or in respect of which another order could be made by the Tribunal under this Act.

R.S., 1985, c. 19 (2nd Supp.), s. 45.

PART IX

NOTIFIABLE TRANSACTIONS

INTERPRETATION

Definitions

108. (1) In this Part,

“operating business”

« **entreprise en exploitation** »

"operating business" means a business undertaking in Canada to which employees employed in connection with the undertaking ordinarily report for work;

"person"

« **personne** »

"person" means an individual, body corporate, unincorporated syndicate, unincorporated organization, trustee, executor, administrator or other legal representative, but does not include a bare trustee;

"prescribed"

« **réglementaire** »

"prescribed" means prescribed by regulations made under section 124;

"voting share"

« **actions comportant droit de vote** »

"voting share" means any share that carries voting rights under all circumstances or by reason of an event that has occurred and is continuing.

Corporations controlled by Her Majesty

(2) For the purposes of this Part, except for the purposes of section 113, one corporation is not affiliated with another corporation by reason only of the fact that both corporations are controlled by Her Majesty in right of Canada or a province, as the case may be.

R.S., 1985, c. 19 (2nd Supp.), s. 45; 1999, c. 2, s. 25.

APPLICATION

General limit relating to parties

109. (1) This Part does not apply in respect of a proposed transaction unless the parties thereto, together with their affiliates,
(a) have assets in Canada that exceed four hundred million dollars in aggregate value, determined as of such time and in such manner as may be prescribed, or such greater amount as may be prescribed; or
(b) had gross revenues from sales in, from or into Canada, determined for such annual period and in such manner as may be prescribed, that exceed four hundred million dollars in aggregate value, or such greater amount as may be prescribed.

Parties to acquisition of shares

(2) For the purposes of this Part, the parties to a proposed acquisition of shares are the person or persons who propose to acquire the shares and the corporation the shares of which are to be acquired.

R.S., 1985, c. 19 (2nd Supp.), s. 45; 1999, c. 2, s. 26.

Application of Part

110. (1) This Part applies only in respect of proposed transactions described in this section.

Acquisition of assets

(2) Subject to sections 111 and 113, this Part applies in respect of a proposed acquisition of any of the assets in Canada of an operating business if the aggregate value of those assets, determined as of the time and in the manner that is prescribed, or the gross revenues from sales in or from Canada generated from those assets, determined for the annual period and in the manner that is prescribed, would exceed the amount determined under subsection (7) or (8), as the case may be.

Acquisition of shares

(3) Subject to sections 111 and 113, this Part applies in respect of a proposed acquisition of voting shares of a corporation that carries on an operating business or controls a corporation that carries on an operating business

(a) if

(i) the aggregate value of the assets in Canada, determined as of the time and in the manner that is prescribed, that are owned by the corporation or by corporations controlled by that corporation, other than assets that are shares of any of those corporations, would exceed the amount determined under subsection (7) or (8), as the case may be, or

(ii) the gross revenues from sales in or from Canada, determined for the annual period and in the manner that is prescribed, generated from the assets referred to in subparagraph (i) would exceed the amount determined under subsection (7) or (8), as the case may be; and

(b) if, as a result of the proposed acquisition of the voting shares, the person or persons acquiring the shares, together with their affiliates, would own voting shares of the corporation that in the aggregate carry more than the following percentages of the votes attached to all the corporation's outstanding voting shares:

(i) 20%, if any of the corporation's voting shares are publicly traded,

(ii) 35%, if none of the corporation's voting shares are publicly traded, or

(iii) 50%, if the person or persons already own more than the percentage set out in subparagraph (i) or (ii), as the case may be, before the proposed acquisition.

Amalgamation

(4) Subject to subsection (4.1) and section 113, this Part applies in respect of a proposed amalgamation of two or more corporations if one or more of those corporations carries on an operating business, or controls a corporation that carries on an operating business, where

(a) the aggregate value of the assets in Canada, determined as of the time and in the manner that is prescribed, that would be owned by the continuing corporation that would result from the amalgamation or by corporations controlled by the continuing corporation, other than assets that are shares of any of those corporations, would exceed the amount determined under subsection (7) or (8), as the case may be; or

(b) the gross revenues from sales in or from Canada, determined for the annual period and in the manner that is prescribed, generated from the assets referred to in paragraph (a) would exceed the amount determined under subsection (7) or (8), as the case may be.

General limit relating to parties to an amalgamation

(4.1) This Part does not apply in respect of a proposed amalgamation of two or more corporations if one or more of those corporations carries on an operating business or controls a corporation that carries on an operating business, unless each of at least two of the amalgamating corporations, together with its affiliates,

(a) has assets in Canada, determined as of the time and in the manner that is prescribed, that exceed in aggregate value the amount determined under subsection (7) or (8), as the case may be; or

(b) has gross revenues from sales in, from or into Canada, determined for the annual period and in the manner that is prescribed, that exceed in aggregate value the amount determined under subsection (7) or (8), as the case may be.

Combination

(5) Subject to sections 112 and 113, this Part applies in respect of a proposed combination of two or more persons to carry on business otherwise than through a corporation if one or more of those persons proposes to contribute to the combination assets that form all or part of an operating business carried on by those persons, or corporations controlled by those persons, and if

(a) the aggregate value of the assets in Canada, determined as of the time and in the manner that is prescribed, that are the subject-matter of the combination would exceed the amount determined under subsection (7) or (8), as the case may be; or

(b) the gross revenues from sales in or from Canada, determined for the annual period and in the manner that is prescribed, generated from the assets referred to in paragraph (a) would exceed the amount determined under subsection (7) or (8), as the case may be.

Combination

(6) Subject to sections 111, 112 and 113, this Part applies in respect of a proposed acquisition of an interest in a combination that carries on an operating business otherwise than through a corporation

(a) if

(i) the aggregate value of the assets in Canada, determined as of the time and in the manner that is prescribed, that are the subject-matter of the combination would exceed the amount determined under subsection (7) or (8), as the case may be, or

(ii) the gross revenues from sales in or from Canada, determined for the annual period and in the manner that is prescribed, generated from the assets referred to in subparagraph (i) would exceed the amount determined under subsection (7) or (8), as the case may be; and

(b) if, as a result of the proposed acquisition of the interest, the person or persons acquiring the interest, together with their affiliates, would hold an aggregate interest in the combination that entitles the person or persons to receive more than 35% of the profits of the combination, or more than 35% of its assets on dissolution, or, if the person or persons acquiring the interest are already so entitled, to receive more than 50% of such profits or assets.

Amount for notification

(7) In the year in which this subsection comes into force, the amount for the purposes of subsections (2) to (6) is \$70,000,000.

Amount for notification — subsequent years

(8) In any year following the year in which subsection (7) comes into force, the amount for the purposes of any of subsections (2) to (6) is

- (a) any amount that is prescribed for that subsection; or
- (b) if no amount has been prescribed for that subsection,
- (i) the amount determined by the Minister in January of that year by rounding off to the nearest million dollars the amount arrived at by using the formula

$$A \times (B / C)$$

where

A is the amount for the previous year,

B is the average of the Nominal Gross Domestic Products at market prices for the most recent four consecutive quarters, and

C is the average of the Nominal Gross Domestic Products at market prices for the four consecutive quarters for the comparable period in the year preceding the year used in calculating B, or

(ii) until the Minister has published under subsection (9) an amount for that year determined under subparagraph (i), if the Minister does so at all, the amount for that subsection for the previous year.

Publication in Canada Gazette

(9) As soon as possible after determining the amount for any particular year, the Minister shall publish the amount in the *Canada Gazette*.

R.S., 1985, c. 19 (2nd Supp.), s. 45; 1999, c. 2, s. 27; 2009, c. 2, s. 436.

EXEMPTIONS

Acquisition of Voting Shares, Assets or Interests

Acquisitions

111. The following classes of transactions are exempt from the application of this Part:

- (a) an acquisition of real property or goods in the ordinary course of business if the person or persons who propose to acquire the assets would not, as a result of the acquisition, hold all or substantially all of the assets of a business or of an operating segment of a business;
- (b) an acquisition of voting shares or of an interest in a combination solely for the purpose of underwriting the shares or the interest, within the meaning of subsection 5(2);
- (c) an acquisition of voting shares, an interest in a combination or assets that would result from a gift, intestate succession or testamentary disposition;
- (d) an acquisition of collateral or receivables, or an acquisition resulting from a foreclosure or default or forming part of a debt work-out, made by a creditor in or pursuant to a credit transaction entered into in good faith in the ordinary course of business;
- (e) an acquisition of a Canadian resource property, as defined in subsection 66(15) of the *Income Tax Act*, pursuant to an agreement in writing that provides for the transfer of that property to the person or persons acquiring the property only if the person or persons acquiring the property incur expenses to carry out exploration or development activities with respect to the property; and

(f) an acquisition of voting shares of a corporation pursuant to an agreement in writing that provides for the issuance of those shares only if the person or persons acquiring them incur expenses to carry out exploration or development activities with respect to a Canadian resource property, as defined in subsection 66(15) of the *Income Tax Act*, in respect of which the corporation has the right to carry out those activities where the corporation does not have any significant assets other than that property.

R.S., 1985, c. 19 (2nd Supp.), s. 45; 1999, c. 2, s. 29, c. 31, s. 229.

Combinations

Combinations that are joint ventures

112. A combination is exempt from the application of this Part if

- (a) all the persons who propose to form the combination are parties to an agreement in writing or intended to be put in writing that imposes on one or more of them an obligation to contribute assets and governs a continuing relationship between those parties;
- (b) no change in control over any party to the combination would result from the combination; and
- (c) the agreement referred to in paragraph (a) restricts the range of activities that may be carried on pursuant to the combination, and contains provisions that would allow for its orderly termination.

R.S., 1985, c. 19 (2nd Supp.), s. 45.

General

General exemptions

113. The following classes of transactions are exempt from the application of this Part:

- (a) a transaction all the parties to which are affiliates of each other;
- (a.1) a transaction in respect of which the Minister of Finance has certified to the Commissioner under paragraph 94(b) that it is, or would be, in the public interest;
- (b) a transaction in respect of which the Commissioner has issued a certificate under section 102;
- (c) a transaction in respect of which the Commissioner or a person authorized by the Commissioner has waived the obligation under this Part to notify the Commissioner and supply information because substantially similar information was previously supplied in relation to a request for a certificate under section 102; and
- (d) such other classes of transactions as may be prescribed.

R.S., 1985, c. 19 (2nd Supp.), s. 45; 1991, c. 45, s. 550, c. 46, s. 594, c. 47, s. 717; 1999, c. 2, ss. 30, 37; 2001, c. 9, s. 580.

NOTICE AND INFORMATION

Notice of proposed transaction

114. (1) Subject to this Part, the parties to a proposed transaction shall, before the transaction is completed, notify the Commissioner that the transaction is proposed and supply the Commissioner with the prescribed information in accordance with this Part, if

- (a) a person, or two or more persons pursuant to an agreement or arrangement, propose to acquire assets in the circumstances set out in subsection 110(2), to acquire shares in the circumstances set out in subsection 110(3) or to acquire an interest in a combination in the circumstances set out in subsection 110(6);

- (b) two or more corporations propose to amalgamate in the circumstances set out in subsection 110(4); or
- (c) two or more persons propose to form a combination in the circumstances set out in subsection 110(5).

Additional information

- (2) The Commissioner or a person authorized by the Commissioner may, within 30 days after receiving the prescribed information, send a notice to the person who supplied the information requiring them to supply additional information that is relevant to the Commissioner's assessment of the proposed transaction.

Contents of notice

- (2.1) The notice shall specify the particular additional information or classes of additional information that are to be supplied.

Corporation whose shares are acquired

- (3) If a proposed transaction is an acquisition of shares and the Commissioner receives information supplied under subsection (1) by a party to the transaction, other than the corporation whose shares are being acquired, before receiving such information from the corporation,

- (a) the Commissioner shall immediately notify the corporation that the Commissioner has received from that party the prescribed information; and
- (b) the corporation shall supply the Commissioner with the prescribed information within 10 days after being notified under paragraph (a).

Notice and information

- (4) Any of the persons required to give notice and supply information under this section may

- (a) if duly authorized to do so, give notice or supply information on behalf of and in lieu of any of the others who are so required in respect of the same transaction; or
- (b) give notice or supply information jointly with any of those others.

R.S., 1985, c. 19 (2nd Supp.), s. 45; 1999, c. 2, s. 31, c. 31, s. 53(F); 2009, c. 2, s. 437.

Prior notice of acquisitions

115. (1) It is not necessary to comply with section 114 in respect of a proposed acquisition of voting shares or of an interest in a combination where a limit set out in subsection 110(3) or (6) would be exceeded as a result of the proposed acquisition within three years immediately following a previous compliance with section 114 required in relation to the same limit.

Notice of future acquisition

- (2) Where a person or persons who propose to acquire voting shares or an interest in a combination are required to comply with section 114 because the twenty or thirty-five per cent limit set out in subsection 110(3) or the thirty-five per cent limit set out in subsection 110(6) would be exceeded as a result of the acquisition, the person or persons may, at the time of the compliance, give notice to the Commissioner of a proposed further acquisition of voting shares or of an interest in a combination that would result in a fifty per cent limit set out in that subsection being exceeded, and

supply the Commissioner with a detailed description in writing of the steps to be carried out in the further acquisition.

Exemption for further acquisitions of voting shares

(3) It is not necessary to comply with section 114 in respect of a proposed further acquisition referred to in subsection (2) if

(a) notice of the further acquisition is given to the Commissioner under subsection (2) and it is carried out in accordance with the description supplied under that subsection; and

(b) an additional notice of the further acquisition is given to the Commissioner in writing within twenty-one, and at least seven, days before the further acquisition.

Limitation

(4) Subsection (3) does not apply in respect of a further acquisition unless the further acquisition is completed within one year after notice of it is given under subsection (2).

R.S., 1985, c. 19 (2nd Supp.), s. 45; 1999, c. 2, ss. 32, 37.

Where information cannot be supplied

116. (1) If any of the information required under section 114 is not known or reasonably obtainable, or cannot be supplied because of the privilege that exists in respect of lawyers and notaries and their clients or because of a confidentiality requirement established by law, the person who is supplying the information may, instead of supplying the information, inform the Commissioner under oath or solemn affirmation of the matters in respect of which information has not been supplied and the reason why it has not been supplied.

Where information not relevant

(2) If any of the information required under section 114 could not, on any reasonable basis, be considered to be relevant to an assessment by the Commissioner as to whether the proposed transaction would or would be likely to prevent or lessen competition substantially, the person who is supplying the information may, in lieu of supplying the information, inform the Commissioner under oath or solemn affirmation of the matters in respect of which information has not been supplied and why the information was not considered relevant.

Where information previously supplied

(2.1) If any of the information required under section 114 has previously been supplied to the Commissioner, the person who is supplying the information may, in lieu of supplying it, inform the Commissioner under oath or solemn affirmation of the matters in respect of which information has previously been supplied and when it was supplied.

Commissioner may require information

(3) Where a person chooses not to supply the Commissioner with information required under section 114 and so informs the Commissioner in accordance with subsection (2) or (2.1) and the Commissioner or a person authorized by the

Commissioner notifies that person, within seven days after the Commissioner is so informed, that the information is required, the person shall supply the Commissioner with the information.

R.S., 1985, c. 19 (2nd Supp.), s. 45; 1999, c. 2, ss. 33, 37; 2009, c. 2, s. 438.

Saving

117. (1) Nothing in section 114 requires any person who is a director of a corporation to supply information that is known to that person by virtue only of his position as a director of an affiliate of the corporation that is neither a wholly-owned affiliate nor a wholly-owning affiliate of the corporation.

Wholly-owned affiliate

(2) For the purposes of subsection (1), one corporation is the wholly-owned affiliate of another corporation if all its outstanding voting shares, other than shares necessary to qualify persons as directors, are beneficially owned by that other corporation directly, or indirectly through one or more affiliates where all the outstanding voting shares of the affiliates, other than shares necessary to qualify persons as directors, are beneficially owned by that other corporation or each other.

Wholly-owning affiliate

(3) For the purposes of subsection (1), one corporation is the wholly-owning affiliate of another corporation if it beneficially owns all the outstanding voting shares of that other corporation, other than shares necessary to qualify persons as directors, directly, or indirectly through one or more affiliates where all the outstanding voting shares of the affiliates, other than shares necessary to qualify persons as directors, are beneficially owned by the corporation or each other.

R.S., 1985, c. 19 (2nd Supp.), s. 45.

Information to be certified

118. The information supplied to the Commissioner under section 114 shall be certified on oath or solemn affirmation

(a) in the case of a corporation supplying the information, by an officer thereof or other person duly authorized by the board of directors or other governing body of the corporation, or

(b) in the case of any other person supplying the information, by that person, as having been examined by that person and as being, to the best of his knowledge and belief, correct and complete in all material respects.

R.S., 1985, c. 19 (2nd Supp.), s. 45; 1999, c. 2, s. 37.

Where transaction not completed

119. Where notice is given and information supplied in respect of a proposed transaction under section 114 but the transaction is not completed within one year thereafter or such longer period as the Commissioner may specify in any particular case, section 114 applies as if no notice were given or information supplied.

R.S., 1985, c. 19 (2nd Supp.), s. 45; 1999, c. 2, s. 37.

120. to 122. [Repealed, 1999, c. 2, s. 34]

COMPLETION OF PROPOSED TRANSACTIONS

Time when transaction may not proceed

123. (1) A proposed transaction referred to in section 114 shall not be completed before the end of

- (a) 30 days after the day on which information required under subsection 114(1) has been received by the Commissioner, if the Commissioner has not, within that time, required additional information to be supplied under subsection 114(2); or
- (b) 30 days after the day on which the information required under subsection 114(2) has been received by the Commissioner, if the Commissioner has within the 30-day period referred to in paragraph (a) required additional information to be supplied under subsection 114(2).

Waiving of waiting period

- (2) A proposed transaction referred to in section 114 may be completed before the end of a period referred to in subsection (1) if, before the end of that period, the Commissioner or a person authorized by the Commissioner notifies the persons who are required to give notice and supply information that the Commissioner does not, at that time, intend to make an application under section 92 in respect of the proposed transaction.

Acquisition of voting shares

- (3) In the case of an acquisition of voting shares to which subsection 114(3) applies, the periods referred to in subsection (1) shall be determined without reference to the day on which the information required under section 114 is received by the Commissioner from the corporation whose shares are being acquired.

R.S., 1985, c. 19 (2nd Supp.), s. 45; 1999, c. 2, s. 35; 2009, c. 2, s. 439.

Failure to comply

123.1 (1) If, on application by the Commissioner, the court determines that a person, without good and sufficient cause, the proof of which lies on the person, has completed or is likely to complete a proposed transaction before the end of the applicable period referred to in section 123, the court may

- (a) order the person to submit information required under subsection 114(2);
- (b) issue an interim order prohibiting any person from doing anything that it appears to the court may constitute or be directed toward the completion or implementation of the proposed transaction;
- (c) in the case of a completed transaction, order any party to the transaction or any other person, in any manner that the court directs, to dissolve the merger or to dispose of assets or shares designated by the court;
- (d) in the case of a completed transaction, order the person to pay, in any manner that the court specifies, an administrative monetary penalty in an amount not exceeding \$10,000 for each day on which they have failed to comply with section 123, determined by the court after taking into account any evidence of the following:
 - (i) the person's financial position,
 - (ii) the person's history of compliance with this Act,
 - (iii) the duration of the period of non-compliance, and
 - (iv) any other relevant factor; or
- (e) grant any other relief that the court considers appropriate.

Purpose of order

(2) The terms of an order under paragraph (1)(d) shall be determined with a view to promoting conduct by the person that is in conformity with the purposes of this Part and not with a view to punishment.

Unpaid monetary penalty

(3) The amount of an administrative monetary penalty imposed under paragraph (1)(d) is a debt due to Her Majesty in right of Canada and may be recovered as such from the person in a court of competent jurisdiction.

Definition of "court"

(4) In this section, "court" means the Tribunal, the Federal Court or the superior court of a province.

2009, c. 2, s. 439.

REGULATIONS

Regulations

124. (1) The Governor in Council may make regulations prescribing anything that is by this Part to be prescribed.

Publication of proposed regulations

(2) Subject to subsection (3), a copy of each regulation that the Governor in Council proposes to make under subsection (1) shall be published in the *Canada Gazette* at least sixty days before the proposed effective date thereof and a reasonable opportunity shall be afforded to interested persons to make representations with respect thereto.

Exception

(3) No proposed regulation need be published under subsection (2) if it has previously been published pursuant to that subsection, whether or not it has been amended as a result of representations made pursuant to that subsection.

R.S., 1985, c. 19 (2nd Supp.), s. 45.

PART X

GENERAL

COMMISSIONER'S OPINIONS

Application for written opinion

124.1 (1) Any person may apply to the Commissioner, with supporting information, for an opinion on the applicability of any provision of this Act or the regulations to conduct or a practice that the applicant proposes to engage in, and the Commissioner may provide a written opinion for the applicant's guidance.

Opinion binding

(2) If all the material facts have been submitted by or on behalf of an applicant for an opinion and they are accurate, a written opinion provided under this section is binding on the Commissioner. It remains binding for so long as the material facts on which the opinion was based remain substantially unchanged and the conduct or practice is carried out substantially as proposed.

2002, c. 16, s. 15.

REFERENCES TO TRIBUNAL

Reference if parties agree

124.2 (1) The Commissioner and a person who is the subject of an inquiry under section 10 may by agreement refer to the Tribunal for determination any question of law, mixed law and fact, jurisdiction, practice or procedure, in relation to the application or interpretation of Part VII.1 or VIII, whether or not an application has been made under Part VII.1 or VIII.

Reference by Commissioner

(2) The Commissioner may, at any time, refer to the Tribunal for determination a question of law, jurisdiction, practice or procedure, in relation to the application or interpretation of Parts VII.1 to IX.

Reference by agreement of parties to a private action

(3) A person granted leave under section 103.1 and the person against whom an order is sought under section 75 or 77 may by agreement refer to the Tribunal for determination any question of law, or mixed law and fact, in relation to the application or interpretation of Part VIII, if the Tribunal grants them leave. They must send a notice of their application for leave to the Commissioner, who may intervene in the proceedings.

Reference procedure

(4) The Tribunal shall decide the questions referred to it informally and expeditiously, in accordance with any rules on references made under section 16 of the *Competition Tribunal Act*.

2002, c. 16, s. 15.

REPRESENTATIONS TO BOARDS, COMMISSIONS OR OTHER TRIBUNALS

Representations to federal boards, etc.

125. (1) The Commissioner, at the request of any federal board, commission or other tribunal or on his own initiative, may, and on direction from the Minister shall, make representations to and call evidence before the board, commission or other tribunal in respect of competition, whenever such representations are, or evidence is, relevant to a matter before the board, commission or other tribunal, and to the factors that the board, commission or other tribunal is entitled to take into consideration in determining the matter.

Definition of "federal board, commission or other tribunal"

(2) For the purposes of this section, "federal board, commission or other tribunal" means any board, commission, tribunal or person that carries on regulatory activities and is expressly charged by or pursuant to an enactment of Parliament with the responsibility of making decisions or recommendations related directly or indirectly to the production, supply, acquisition or distribution of a product.

R.S., 1985, c. 19 (2nd Supp.), s. 45; 1999, c. 2, s. 37.

Representations to provincial boards, etc.

126. (1) The Commissioner, at the request of any provincial board, commission or other tribunal, or on his own initiative with the consent of the board, commission or other tribunal, may make representations to and call evidence before the board, commission or other tribunal in respect of competition, whenever such representations are, or evidence is, relevant to a matter before the board, commission or other tribunal, and to the factors that the board, commission or other tribunal is entitled to take into consideration in determining the matter.

Definition of "provincial board, commission or other tribunal"

(2) For the purposes of this section, "provincial board, commission or other tribunal" means any board, commission, tribunal or person that carries on regulatory activities and is expressly charged by or pursuant to an enactment of the legislature of a province with the responsibility of making decisions or recommendations related directly or indirectly to the production, supply, acquisition or distribution of a product.

R.S., 1985, c. 19 (2nd Supp.), s. 45; 1999, c. 2, s. 37.

REPORT TO PARLIAMENT

Annual report

127. The Commissioner shall report annually to the Minister on the operation of the Acts referred to in subsection 7(1), and the Minister shall cause the report to be laid before each House of Parliament on any of the first fifteen days after the Minister receives the report on which that House is sitting.

R.S., 1985, c. 19 (2nd Supp.), s. 45; 1999, c. 2, s. 36.

REGULATIONS

Regulations

128. (1) The Governor in Council may make such regulations as are necessary for carrying out this Act and for the efficient administration thereof.

Publication of proposed regulations

(2) Subject to subsection (3), a copy of each regulation that the Governor in Council proposes to make under subsection (1) shall be published in the *Canada Gazette* at least sixty days before the proposed effective date thereof and a reasonable opportunity shall be afforded to interested persons to make representations with respect thereto.

Exception

(3) No proposed regulation need be published under subsection (2) if it has previously been published pursuant to that subsection, whether or not it has been amended as a result of representations made pursuant to that subsection.

R.S., 1985, c. 19 (2nd Supp.), s. 45.

RELATED PROVISIONS

— R.S., 1985, c. 19 (2nd Supp.), s. 61:

Orders of the Commission

61. For the purposes of the *Competition Act*, as amended by this Act, an order of the Restrictive Trade Practices Commission under Part V, as it read immediately prior to the coming into force of section 29 of this Act, or pursuant to subsection 60(1) shall be deemed to be an order of the Competition Tribunal under the *Competition Act*.

— 1999, c. 2, ss. 38 to 40:

Person holding office of Director

38. (1) The person holding the office of Director of Investigation and Research immediately before the coming into force of section 4 shall continue in office as the Commissioner of Competition referred to in section 7 of the *Competition Act*, as amended by this Act.

Persons holding office as Deputy Director

(2) Every person holding the office of Deputy Director of Investigation and Research immediately before the coming into force of section 5 shall continue in office as a Deputy Commissioner of Competition referred to in section 8 of the *Competition Act*, as enacted by this Act.

— 1999, c. 2, ss. 38 to 40:

Outstanding prohibition orders

39. An order made under section 34 of the *Competition Act* in respect of an offence under any of sections 52, 53 or 57 to 59 of that Act, as those sections read immediately before the coming into force of sections 12, 14 and 17 of this Act, is deemed to have been made under paragraph 74.1(1)(a) of the *Competition Act*, as enacted by section 22 of this Act.

— 1999, c. 2, ss. 38 to 40:

Variation or rescission of orders

40. Subsection 34(2.3) of the *Competition Act*, as enacted by subsection 11(2) of this Act, applies in respect of orders made under section 34 of the *Competition Act* whether before or after the coming into force of section 11 of this Act.

— 1999, c. 2, s. 54:

References to "Director"

54. Every reference to the Director of Investigation and Research or a Deputy Director of Investigation and Research in any other Act of Parliament or in a regulation, order or other instrument made under any Act of Parliament is deemed to be a reference to the Commissioner of Competition or a Deputy Commissioner of Competition, as the case may be.

— 2009, c. 2, s. 440:

Agreements or arrangements entered into before royal assent

440. Any party to an agreement or arrangement entered into before the day on which this Act receives royal assent may, within one year after that day, apply under section 124.1 of the *Competition Act* without payment of any fee for an opinion on the applicability to the agreement or arrangement of section 45 or 90.1 of the *Competition Act*, as enacted by sections 410 and 429, respectively, as if the agreement or arrangement had not yet been entered into and as if that section 45 or 90.1 were in force.

AMENDMENTS NOT IN FORCE

—2010, c. 23, s. 70:

R.S., c. 19 (2nd Supp.), s. 20(3)

70. (1) The definition “record” in subsection 2(1) of the *Competition Act* is replaced by the following:

“record”

« document »

“record” means any information that is recorded on any medium and that is capable of being understood by a person or read by a computer system or other device;

(2) Subsection 2(1) of the Act is amended by adding the following in alphabetical order:

“computer system”

« ordinateur »

“computer system” has the same meaning as in subsection 342.1(2) of the *Criminal Code*;

“data”

« données »

“data”, other than in Part III, means signs, signals, symbols or concepts that are being prepared or have been prepared in a form suitable for use in a computer system;

“electronic message”

« message électronique »

“electronic message” means a message sent by any means of telecommunication, including a text, sound, voice or image message;

“information”

« renseignement »

“information” includes data;

“locator”

« localisateur »

“locator” means a name or information used to identify a source of data on a computer system, and includes a URL;

“sender information”

« renseignements sur l’expéditeur »

“sender information” means the part of an electronic message — including the data relating to source, routing, addressing or signalling — that identifies or purports to identify the sender or the origin of the message;

“subject matter information”

« objet »

“subject matter information” means the part of an electronic message that purports to summarize the contents of the message or to give an indication of them;

—2010, c. 23, s. 71:

R.S., c. 19 (2nd Supp.), s. 24

71. Subsection 16(6) of the Act is repealed.

—2010, c. 23, s. 72:

R.S., c. 19 (2nd Supp.), s. 24

72. Subsection 20(2) of the Act is replaced by the following:

Copies

(2) Copies of any records referred to in subsection (1), made by any process of reproduction, on proof orally or by affidavit that they are true copies, are admissible in evidence in any proceedings under this Act and have the same probative force as the original.

—2010, c. 23, s. 73:

1999, c. 2, s. 10; 2002, c. 16, s. 5

73. Subsections 33(1) to (7) of the Act are replaced by the following:

Interim injunction

33. (1) On application by or on behalf of the Attorney General of Canada or the attorney general of a province, a court may issue an interim injunction forbidding any person named in the application from doing any act or thing that it appears to the court could constitute or be directed toward the commission of an offence under Part VI — other than an offence under section 52 involving the use of any means of telecommunication or an offence under section 52.01, 52.1 or 53 — or under section 66, pending the commencement or completion of a proceeding under subsection 34(2) or a prosecution against the person, if it appears to the court that

- (a) the person has done, is about to do or is likely to do any act or thing constituting or directed toward the commission of the offence; and
- (b) if the offence is committed or continued,
 - (i) injury to competition that cannot adequately be remedied under any other provision of this Act will result, or
 - (ii) serious harm is likely to ensue unless the injunction is issued and the balance of convenience favours issuing the injunction.

Injunction — offences involving telecommunication

(1.1) On application by or on behalf of the Attorney General of Canada or the attorney general of a province, a court may issue an injunction forbidding any person named in the application from doing any act or thing that it appears to the court could constitute or be directed toward the commission of an offence under section 52 involving the use of any means of telecommunication or an offence under section 52.01, 52.1 or 53, if it appears to the court that

- (a) the person has done, is about to do or is likely to do any act or thing constituting or directed toward the commission of the offence;
- (b) if the offence is committed or continued, serious harm is likely to ensue unless the injunction is issued; and
- (c) the balance of convenience favours issuing the injunction.

Injunction against third parties — offences involving telecommunication

(1.2) On application by or on behalf of the Attorney General of Canada or the attorney general of a province, a court may issue an injunction ordering any person named in the application to refrain from supplying to another person a product that it appears to the court is or is likely to be used to commit or continue an offence under section 52 involving the use of any means of telecommunication or an offence under section 52.01, 52.1 or 53, or to do any act or thing that it appears to the court could prevent the commission or continuation of such an offence, if it appears to the court that

- (a) a person has done, is about to do or is likely to do any act or thing constituting or directed toward the commission of the offence;
- (b) if the offence is committed or continued, serious harm is likely to ensue unless the injunction is issued; and
- (c) the balance of convenience favours issuing the injunction.

Notice of application

(2) Subject to subsection (3), at least 48 hours' notice of an application for an injunction under subsection (1), (1.1) or (1.2) shall be given by or on behalf of the Attorney General of Canada or the attorney general of a province, as the case may be, to each person against whom the injunction is sought.

Ex parte application

(3) If a court to which an application is made under subsection (1), (1.1) or (1.2) is satisfied that subsection (2) cannot reasonably be complied with, or that the urgency of the situation is such that service of notice in accordance with subsection (2) would not be in the public interest, it may proceed with the application *ex parte* but any injunction issued under subsection (1), (1.1) or (1.2) by the court on *ex parte* application has effect only for the period, not exceeding 10 days, that is specified in the order.

Terms of injunction

(4) An injunction issued under subsection (1), (1.1) or (1.2)

(a) shall be in the terms that the court that issues it considers necessary and sufficient to meet the circumstances of the case; and

(b) subject to subsection (3), has effect for the period that is specified in the order.

Extension or cancellation of injunction

(5) On application by or on behalf of the Attorney General of Canada or the attorney general of a province, as the case may be, or by or on behalf of any person to whom the injunction is directed, on at least 48 hours' notice of the application to all other parties to the injunction, a court that issues an injunction under subsection (1), (1.1) or (1.2) may, by order,

(a) despite subsections (3) and (4), continue the injunction, with or without modification, for any definite period that is specified in the order; or

(b) revoke the injunction.

Duty of applicant

(6) If an injunction is issued under subsection (1), (1.1) or (1.2), the Attorney General of Canada or the attorney general of a province, as the case may be, shall proceed as expeditiously as possible to institute and conclude any prosecution or proceedings arising out of the acts or things on the basis of which the injunction was issued.

Punishment for disobedience

(7) A court may punish any person who contravenes an injunction issued by it under subsection (1), (1.1) or (1.2) by a fine in the discretion of the court or by imprisonment for a term not exceeding two years.

—2010, c. 23, s. 74:

1999, c. 2, s. 12(1)

74. (1) Subsection 52(1.2) of the Act is replaced by the following:

Permitted representations

(1.2) For greater certainty, in this section and in sections 52.01, 52.1, 74.01, 74.011 and 74.02, the making or sending of a representation includes permitting a representation to be made or sent.

1999, c. 2, s. 12(1)

(2) Paragraph 52(2)(d) of the Act is replaced by the following:

(d) made in the course of in-store or door-to-door selling to a person as ultimate user, or by communicating orally by any means of telecommunication to a person as ultimate user, or

—2010, c. 23, s. 75:

75. The Act is amended by adding the following after section 52:

False or misleading representation — sender or subject matter information

52.01 (1) No person shall, for the purpose of promoting, directly or indirectly, any business interest or the supply or use of a product, knowingly or recklessly send or cause to be sent a false or misleading representation in the sender information or subject matter information of an electronic message.

False or misleading representation — electronic message

(2) No person shall, for the purpose of promoting, directly or indirectly, any business interest or the supply or use of a product, knowingly or recklessly send or cause to be sent in an electronic message a representation that is false or misleading in a material respect.

False or misleading representation — locator

(3) No person shall, for the purpose of promoting, directly or indirectly, any business interest or the supply or use of a product, knowingly or recklessly make or cause to be made a false or misleading representation in a locator.

Proof of deception not required

(4) For greater certainty, in establishing that any of subsections (1) to (3) was contravened, it is not necessary to prove that any person was deceived or misled.

General impression to be considered

(5) In a prosecution for a contravention of any of subsections (1) to (3), the general impression conveyed by a representation as well as its literal meaning are to be taken into account.

Offence and punishment

(6) Any person who contravenes any of subsections (1) to (3) is guilty of an offence and
(a) liable on conviction on indictment to a fine in the discretion of the court or to imprisonment for a term not exceeding 14 years, or to both; or
(b) liable on summary conviction to a fine not exceeding \$200,000 or to imprisonment for a term not exceeding one year, or to both.

Reviewable conduct

(7) Nothing in Part VII.1 is to be read as excluding the application of this section to the making of a representation that constitutes reviewable conduct within the meaning of that Part.

Where application made under Part VII.1

(8) No proceedings may be commenced under this section against a person on the basis of facts that are the same or substantially the same as the facts on the basis of which an order against that person is sought under Part VII.1.

Interpretation

(9) For the purposes of this section,
(a) an electronic message is considered to have been sent once its transmission has been initiated; and

(b) it is immaterial whether the electronic address to which an electronic message is sent exists or whether an electronic message reaches its intended destination.

Assisting foreign states

52.02 (1) The Commissioner may, for the purpose of assisting an investigation or proceeding in respect of the laws of a foreign state, an international organization of states or an international organization established by the governments of states that address conduct that is substantially similar to conduct prohibited under section 52, 52.01, 52.1, 53, 55 or 55.1,

(a) conduct any investigation that the Commissioner considers necessary to collect relevant information, using any powers that the Commissioner may use under this Act or the *Criminal Code* to investigate an offence under any of those sections; and

(b) disclose the information to the government of the foreign state or to the international organization, or to any institution of any such government or organization responsible for conducting investigations or initiating proceedings in respect of the laws in respect of which the assistance is being provided, if the government, organization or institution declares in writing that

(i) the use of the information will be restricted to purposes relevant to the investigation or proceeding, and

(ii) the information will be treated in a confidential manner and, except for the purposes mentioned in subparagraph (i), will not be further disclosed without the Commissioner's express consent.

Mutual assistance

(2) In deciding whether to provide assistance under subsection (1), the Commissioner shall consider whether the government, organization or institution agrees to provide assistance for investigations or proceedings in respect of any of the sections mentioned in subsection (1).

—2010, c. 23, s. 76:

1999, c. 2, s. 13

76. (1) Subsection 52.1(1) of the Act is replaced by the following:

Definition of "telemarketing"

52.1 (1) In this section, "telemarketing" means the practice of communicating orally by any means of telecommunication for the purpose of promoting, directly or indirectly, any business interest or the supply or use of a product.

1999, c. 2, s. 13

(2) Paragraph 52.1(2)(a) of the Act is replaced by the following:

(a) disclosure is made, in a fair and reasonable manner at the beginning of each communication, of the identity of the person on behalf of whom the communication is made, the nature of the business interest or product being promoted and the purposes of the communication;

1999, c. 2, s. 13

(3) Subsection 52.1(5) of the Act is replaced by the following:

Time of disclosure

(5) The disclosure of information referred to in paragraph (2)(b) or (c) or (3)(b) or (c) must be made during the course of a communication unless it is established by the accused that the information was disclosed within a reasonable time before the communication, by any means, and the information was not requested during the communication.

—2010, c. 23, s. 77:

77. The Act is amended by adding the following after section 74.01:

False or misleading representation — sender or subject matter information

74.011 (1) A person engages in reviewable conduct who, for the purpose of promoting, directly or indirectly, any business interest or the supply or use of a product, sends or causes to be sent a false or misleading representation in the sender information or subject matter information of an electronic message.

False or misleading representation — electronic message

(2) A person engages in reviewable conduct who, for the purpose of promoting, directly or indirectly, any business interest or the supply or use of a product, sends or causes to be sent in an electronic message a representation that is false or misleading in a material respect.

False or misleading representation — locator

(3) A person engages in reviewable conduct who, for the purpose of promoting, directly or indirectly, any business interest or the supply or use of a product, makes or causes to be made a false or misleading representation in a locator.

General impression to be considered

(4) In proceedings under this section, the general impression conveyed by a representation as well as its literal meaning shall be taken into account in determining whether or not the person who made the representation engaged in the reviewable conduct.

Interpretation

(5) For the purposes of this section,

(a) an electronic message is considered to have been sent once its transmission has been initiated; and

(b) it is immaterial whether the electronic address to which an electronic message is sent exists or whether an electronic message reaches its intended destination.

Assisting foreign states

74.012 (1) The Commissioner may, for the purpose of assisting an investigation or proceeding in respect of the laws of a foreign state, an international organization of states or an international organization established by the governments of states that address conduct that is substantially similar to conduct that is reviewable under section 74.01, 74.011, 74.02, 74.04, 74.05 or 74.06,

(a) conduct any investigation that the Commissioner considers necessary to collect relevant information, using any powers that the Commissioner may use under this Act to investigate conduct that is reviewable under any of those sections; and

(b) disclose the information to the government of the foreign state or to the international organization, or to any institution of any such government or organization responsible for conducting investigations or initiating proceedings in respect of the laws in respect of which the assistance is being provided, if the government, organization or institution declares in writing that

(i) the use of the information will be restricted to purposes relevant to the investigation or proceeding, and

(ii) the information will be treated in a confidential manner and, except for the purposes mentioned in subparagraph (i), will not be further disclosed without the Commissioner's express consent.

Limitation

(2) Subsection (1) does not apply if the contravention of the laws of the foreign state has consequences that would be considered penal under Canadian law.

Mutual assistance

(3) In deciding whether to provide assistance under subsection (1), the Commissioner shall consider whether the government, organization or institution agrees to provide assistance for investigations or proceedings in respect of any of the sections mentioned in subsection (1).

—2010, c. 23, s. 78:

1999, c. 2, s. 22

78. Paragraph 74.03(1)(d) of the Act is replaced by the following:

(d) made in the course of in-store or door-to-door selling to a person as ultimate user, or by communicating orally by any means of telecommunication to a person as ultimate user, or

—2010, c. 23, s. 79:

79. The Act is amended by adding the following after section 74.1:

Deduction from administrative monetary penalty

74.101 (1) If a court determines that a person is engaging in or has engaged in conduct that is reviewable under section 74.011 and orders the person to pay an administrative monetary penalty under paragraph 74.1(1)(c), then the court shall deduct from the amount of the penalty that it determines any amount that the person

(a) has been ordered to pay under paragraph 51(1)(b) of *An Act to promote the efficiency and adaptability of the Canadian economy by regulating certain activities that discourage reliance on electronic means of carrying out commercial activities, and to amend the Canadian Radio-television and Telecommunications Commission Act, the Competition Act, the Personal Information Protection and Electronic Documents Act and the Telecommunications Act* in respect of the same conduct; or

(b) has agreed in a settlement agreement to pay on account of amounts referred to in paragraph 51(1)(b) of that Act in respect of the same conduct.

Restitution and interim injunction

(2) If a court determines that a person is engaging in or has engaged in conduct that is reviewable under subsection 74.011(2), it may order the person to pay an amount under paragraph 74.1(1)(d), and may issue an interim injunction under section 74.111, as if the conduct were conduct that is reviewable under paragraph 74.01(1)(a).

—2010, c. 23, s. 80:

1999, c. 2, s. 22; 2002, c. 16, s. 10(1)

80. Subsections 74.11(1) to (4) of the Act are replaced by the following:

Temporary order

74.11 (1) On application by the Commissioner, a court may order a person who it appears to the court is engaging in conduct that is reviewable under this Part not to engage in that conduct or substantially similar reviewable conduct if it appears to the court that

(a) serious harm is likely to ensue unless the order is issued; and

(b) the balance of convenience favours issuing the order.

Temporary order — supply of a product

(1.1) On application by the Commissioner, a court may order any person named in the application to refrain from supplying to another person a product that it appears to the court is or is likely to be used to engage in conduct that is reviewable under this Part, or to do any act or thing that it appears to the court could prevent a person from engaging in such conduct, if it appears to the court that

(a) serious harm is likely to ensue unless the order is issued; and

(b) the balance of convenience favours issuing the order.

Duration

(2) Subject to subsection (5), an order made under subsection (1) or (1.1) has effect, or may be extended on application by the Commissioner, for any period that the court considers sufficient to meet the circumstances of the case.

Notice of application

(3) Subject to subsection (4), at least 48 hours' notice of an application referred to in subsection (1), (1.1) or (2) shall be given by or on behalf of the Commissioner to the person in respect of whom the order or extension is sought.

Ex parte application

(4) The court may proceed *ex parte* with an application made under subsection (1) or (1.1) if it is satisfied that subsection (3) cannot reasonably be complied with or that the urgency of the situation is such that service of notice in accordance with subsection (3) would not be in the public interest.

—2010, c. 23, s. 81:

1999, c. 2, s. 22

81. Section 74.16 of the Act is replaced by the following:

Where proceedings commenced under section 52 or 52.01

74.16 No application may be made under this Part against a person on the basis of facts that are the same or substantially the same as the facts on the basis of which proceedings have been commenced against that person under section 52 or 52.01.

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